

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Telecommunications Relay Services
and Speech-to-Speech Services for
Individuals with Hearing and Speech
Disabilities
CC Docket No. 98-67

REPORT AND ORDER AND
FURTHER NOTICE OF PROPOSED RULEMAKING

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**I. REPORT AND ORDER**

**A. INTRODUCTION**

1. With this Order, we amend the rules governing the delivery of telecommunications relay services to expand the kinds of relay services available to consumers and to improve the quality of relay services, based on our ten years of experience with Telecommunications Relay Service (TRS) and changes in available technologies. Title IV of the Americans with Disabilities Act of 1990 (ADA), which is codified at section 225 of the Communications Act of 1934, as amended (“Communications Act”), requires the Commission to ensure that TRS is available, to the extent possible and in the most efficient manner, to individuals with hearing and speech disabilities in the United States.<sup>1</sup> Section 225 defines relay

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<sup>1</sup> Pub. L. No. 101-336, § 401, 104 Stat. 327, 366-69 (1990) (adding section 225 to the Communications Act of 1934, as amended, 47 U.S.C. § 225).

service to be a telephone transmission service that provides the ability for an individual with a hearing or speech disability to engage in communication by wire or radio with a hearing individual in a manner functionally equivalent to someone without such a disability.<sup>2</sup> Section 225 requires the Commission to ensure that interstate and intrastate relay services are available throughout the country and to establish regulations to ensure the quality of relay service.<sup>3</sup> To fulfill this mandate, the Commission first issued rules in 1991.<sup>4</sup> TRS has been available on a uniform, nationwide basis since July 26, 1993.<sup>5</sup>

2. TRS enables persons with hearing and speech disabilities to communicate by telephone with persons who may or may not have such disabilities.<sup>6</sup> Today, TRS facilities have special equipment and are staffed by communications assistants (CAs) who relay conversations between people who use text telecommunications devices and people who communicate by voice. The caller can use a text telephone (TTY) to dial the telephone number of the local TRS center.<sup>7</sup> For the TTY user, this first step - the inbound call to the TRS center - is functionally equivalent to receiving a dial tone. The CA in turn places an outbound voice call from the TRS center to the called party. The CA serves as the link in the conversation, converting all typed TTY messages from the TTY caller into voice messages, and all voice messages from the called party into typed messages for the TTY user. The process is performed in reverse when a voice telephone user initiates the call to a TTY user. This form of TTY-based TRS provides a valuable link between TTY users and users of conventional voice telephones. However, concerns about the quality of these TTY-based relay services have grown over the past ten years. Additionally, these relay

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<sup>2</sup> 47 U.S.C. § 225(a)(3).

<sup>3</sup> *Id.* at § 225(b).

<sup>4</sup> 47 C.F.R. § 64.604; Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, CC Docket No. 90-571, Report and Order and Request for Comments, 6 FCC Rcd 4657 (1991)(*First Report and Order*).

<sup>5</sup> Under section 225, common carriers providing telephone voice transmission services were required to begin providing TRS, throughout the areas they served, as of July 26, 1993. *See* 47 U.S.C. § 225(c). Prior to this time, some states offered relay services, but the services offered differed from state to state, and were subject to many limitations. *See* Strauss, Title IV - Telecommunications, in *Implementing the Americans with Disabilities Act* at 156-158 (Gostin & Beyer ed. 1993).

<sup>6</sup> 47 C.F.R. §§ 64.601 (5), (7).

<sup>7</sup> Individual states have their own TRS access numbers (usually toll-free numbers). In addition, some state TRS programs have separate numbers for voice and TTY access. Some states provide access to TRS through an abbreviated dialing arrangement by dialing 711. In addition to dialing their state TRS access numbers for both inter- and intrastate relay calls, TRS users may also dial a toll-free number to reach alternative providers of interstate service.

services do not address the telecommunications needs of individuals with other types of communication disabilities. This Order is intended to improve the quality of traditional relay services and lead to the widespread establishment of new types of relay services. As a result, many Americans who currently have limited or no practical access to telecommunications networks will have service that is functionally equivalent to the access enjoyed by Americans without disabilities.

3. While the statutory obligation to deliver relay services falls to common carriers, the law gives states a strong role by considering carriers to be in compliance with this obligation if they operate in a state that has a relay program certified as compliant by this Commission.<sup>8</sup> All states have certified programs today. In general, a state administrator, or a statewide trade association of common carriers, contracts with a relay provider for relay services for their state. The costs of intrastate relay services are recovered from the state's intrastate TRS fund, to which all intrastate carriers contribute in some manner. Similarly, the costs of interstate relay service are recovered from the interstate TRS Fund, to which all interstate carriers contribute.

4. TRS is required by statute to provide telecommunication services which are functionally equivalent to voice services to the extent possible. Functional equivalence is, by nature, a continuing goal that requires periodic reassessment. The ever-increasing availability of new services and the development of new technologies continually challenge us to determine what specific services and performance standards are necessary to ensure that TRS is functionally equivalent to voice telephone service. For example, the recent development of speech-to-speech (STS) relay services provides a telecommunications link for persons with speech disabilities, and video relay interpreting (VRI) facilitates telecommunications for individuals who use sign language.

5. Telecommunications relay service is critical given the importance that telecommunications plays in a person's ability to participate in this information age. It provides telephone access to a significant number of Americans who, without it, might not be able to make or receive calls from others. According to the National Center for Health Statistics, more than 23 million people are deaf or have a hearing disability, and more than 2.7 million people have a speech disability.<sup>9</sup>

6. According to the U.S. Census Bureau 1992 Survey of Income and Program Participation, 10.9 million Americans have a functional limitation in "[h]earing what is said in a

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<sup>8</sup> 47 U.S.C. § 225 (a), (c).

<sup>9</sup> "Prevalence of selected chronic conditions: United States, 1990-1992." National Center for Health Statistics. Vital Health Stat. 10(194), 1997.

normal conversation" and 2.3 million have a functional limitation in "[h]aving one's speech understood."<sup>10</sup>

7. TRS is a critical tool for employment. If people with hearing or speech disabilities cannot communicate by telephone, their ability to compete and succeed in today's job market is threatened. Being able to place a phone call to a prospective employer, to answer an advertisement for a job, to receive training, and to advance one's career through formal and informal networks depends largely on one's ability to communicate with many different individuals and entities.<sup>11</sup> Improving the quality of TRS will enhance employment opportunities for people with hearing and speech disabilities and may contribute to a decrease in their unemployment rate. According to recent statistics on employment of persons with disabilities, there are significant differences between working-age Americans with hearing and speech disabilities and those without disabilities.<sup>12</sup> While 82.1 percent of the general working age population (ages 21-64) is employed, only 52.3 percent of all people with disabilities are employed.<sup>13</sup> This figure includes persons who have difficulty performing functional activities, such as hearing or having their speech understood.<sup>14</sup> Among those with severe disabilities,<sup>15</sup> only 26.1 percent are employed.<sup>16</sup>

8. Today, we adopt rules that will greatly improve the quality of TRS. These rules fulfill section 225's mandate by increasing the availability and usefulness of the telecommunications system for Americans with speech and hearing disabilities.

## B. EXECUTIVE SUMMARY

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<sup>10</sup> President's Committee on Employment of People with Disabilities Comments at 4.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* "Severe disability" is defined by the U.S. Census survey to mean someone who is unable to perform one or more activities of daily living, or has one or more specific impairments, and may include persons with one or more specific impairments such as inability to speak or hear.

<sup>16</sup> *Id.*

9. In January 1997, we released a *Notice of Inquiry (NOI)* on the quality of TRS service.<sup>17</sup> Based on the record developed in the *NOI*, the Commission released a *Notice of Proposed Rulemaking (Notice)*<sup>18</sup> that proposed rules to enhance the quality of telecommunications relay service. In response, the Commission received numerous suggestions on ways to improve TRS. After considering the many comments received, by this Order, we:

- find that the statutory definition of telecommunications relay services is not limited to relay services using a TTY, and includes STS, VRI and non-English language relay services;
- require that common carriers provide STS and interstate Spanish relay services by March 1, 2001;
- do not require VRI, but encourages it by permitting the recovery of the costs of both intrastate and interstate VRI calls from the interstate TRS Fund;
- require that all relay services, whether mandatory or voluntary, funded by intrastate and interstate TRS Funds must comply with minimum service quality standards; and modifies the rules to accommodate STS and VRI service;
- modify the speed of answer requirement so that consumers will reach a communications assistant more quickly;
- impose a minimum typing speed of 60 wpm for CAs in order to speed the transmission of calls using TTYs;
- amend the rules to minimize disruption during relay calls by establishing a minimum time that a CA must stay with a call;
- amend the rules to permit an STS CA, at the request of the STS user, to retain information beyond the duration of a call in order to facilitate the completion of consecutive calls;

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<sup>17</sup> Telecommunications Relay Services, the Americans with Disabilities Act of 1990, and the Telecommunications Act of 1996, CC Docket No. 90-571, *Notice of Inquiry*, 12 FCC Rcd 1152 (1997)(*NOI*).

<sup>18</sup> Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CC Docket No. 98-67, *Notice of Proposed Rulemaking*, 13 FCC Rcd 14187 (1998)(*Notice*).

- permit the STS CA to facilitate a call for a user with a speech disability so long as the CA does not interfere with the independence of the user, the user maintains control of the conversation, and the user does not object;
- require that relay providers offer STS users the option to maintain at the relay center a list of frequently called names and telephone numbers;
- establish that information gathered by relay providers on individual caller preferences and used to complete TRS calls is not customer proprietary network information (CPNI) under section 222 of the Act, must be transferred during a change in TRS provider and cannot be used for any purpose other than the handling of TRS calls;
- require TRS providers to automatically and immediately transfer emergency calls to the appropriate 911 operator and relay the caller's number to the operator orally;
- clarify that the existing rule requires outreach to all callers and for all forms of TRS;
- conclude that section 225 by its terms does not prohibit us from requiring relay services to accommodate enhanced or information services;
- require relay service to accommodate interactive menus and other recorded messages by requiring CAs to alert the user to the presence of a recorded message through a hot key on the CA's terminal, and to record recorded messages;
- require relay service to include the ability to make pay-per-call calls;
- require states to notify the Commission about substantive changes in their TRS programs within 60 days of when they occur;
- require states and providers to submit to the Commission a contact person or office for filing consumer complaints, to be posted on the Commission's web site;
- adopt the Commission's informal complaint process for TRS complaints; and
- require state programs and interstate TRS providers to maintain a log of consumer complaints that allege a violation of the minimum standards and annually report to the FCC the number of complaints received.

10. In the *Further Notice*, we seek comment on:

- the establishment of a national education campaign to increase awareness of TRS among all callers, not just those with disabilities;
- whether there should be a separate, nationwide 800 number for STS relay service; and
- whether TRS providers should have access to SS7 technology in order to better handle emergency calls, be compatible with Caller ID and more efficiently bill for and deliver relay services.

## C. DISCUSSION

### 1. Scope of TRS

#### a. Definition

11. Background. Section 225 and the Commission's rules define telecommunications relay service as:

[t]elephone transmission services that provide the ability for an individual who has a hearing impairment or speech impairment to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing impairment or speech impairment to communicate using voice communication services by wire or radio. Such term includes services that enable two-way communication between an individual who uses a TDD [text telephone device] or other nonvoice terminal device and an individual who does not use such a device.<sup>19</sup>

12. Until now, the Commission has found only services involving TTY-to-speech and speech-to-TTY to be TRS.<sup>20</sup> We tentatively concluded in the *Notice* that telecommunications relay service includes any wire or radio communications service that enables persons with hearing or speech disabilities to use the communications network to communicate with others, and is not limited to services using TTYs.<sup>21</sup>

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<sup>19</sup> 47 U.S.C § 225(a)(3); 47 C.F.R. § 64.601(7).

<sup>20</sup> The Commission's rules currently contain minimum standards only for TTY-based TRS. *See* Section 64.604 of the Commission's rules, 47 C.F.R. § 64.604 ("Mandatory minimum standards").

<sup>21</sup> *See Notice*, 13 FCC Rcd at 14193.

13. Discussion. We adopt our tentative conclusion that TRS is not limited to services using TTYs. Our tentative conclusion was unopposed by commenters. The language of the statute fully supports this interpretation.<sup>22</sup> While the statute refers explicitly to text telephones, that reference is merely illustrative, and not exhaustive, of the kind of services that are included in TRS.<sup>23</sup> The first sentence of section 225(a)(3) by its express terms applies broadly to any “communication by wire or radio.” We do not believe that the second sentence, providing for inclusion of TTY services as TRS, fairly can be viewed as narrowing the generic definition set forth in the preceding sentence. Rather, the term “includes”, by its very nature, indicates that any designations following that word are illustrative, rather than a comprehensive list of all types of TRS.<sup>24</sup> Because the purpose of section 225 is to give people with hearing or speech disabilities access to the telephone network, and because Congress realized that to fully participate in society one must be able to call friends, family, businesses and employers, section 225 must be read to apply to any service that allows individuals with hearing and speech disabilities to communicate by wire or radio.<sup>25</sup> While we do not establish a single, formal process for determining if new types of service fit the statutory definition of TRS, we do consider the individual services that are currently before us. As new services develop, parties may petition us for a determination as to whether a service falls within the definition of telecommunications relay service.

#### **b. Speech-to-Speech Relay Service**

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<sup>22</sup> See AIM Comments at 1; Dr. Blackstone Comments at 1; CPUC Comments at 2; Ms. Davis Comments at 1; Mr. Fleming Comments at 1; Ms. Ladew Comments at 1; MCI Comments at 2; the President's Committee Comments at 4; Dr. Ratcliff Comments at 1; Ms. Shipley Comments at 1; ULS Comments at 1; COR Reply at 4; TDI Reply at 4; Mr. Travers Reply at 1; Wynd Reply at 1. *But see* SBC Comments at 4 (questions the Commission's expansion of TRS to include a category for "improved" services; claims this is not supported by the Act or regulations).

<sup>23</sup> See Dr. Blackstone Comments at 1; Mr. Fleming Comments at 1; Ms. Ladew Comments at 1; Dr. Ratcliff Comments at 1; Dr. Segalman Comments at 1; Ms. Keller Reply at 1-2. In the *Notice*, the Commission asked that comments and reply comments from the public be filed by July 20, 1998 and September 14, 1998, respectively. As a member of the public, Dr. Segalman filed comments on July 19, 1998 and reply comments on September 5, 1998. From January 1 through June of 1999, Dr. Segalman served the Commission as a part-time detailee under the provisions of the Intergovernmental Personnel Act (5 U.S.C. § 3371, *et seq.*). During that period, he advised the Common Carrier Bureau on technical and training issues related to STS relay.

<sup>24</sup> Webster defines “includes” as “to take in or comprise as part of a whole.” Webster’s Ninth New Collegiate Dictionary, 1991.

<sup>25</sup> See University Legal Services (ULS) Comments at 2.

14. Background. Speech-to-speech relay service, or STS, involves the use of specially trained CAs who understand the speech patterns of persons with speech disabilities and can repeat the words spoken. We tentatively concluded in the *Notice* that STS falls within the definition of TRS.<sup>26</sup> We also tentatively concluded that all common carriers providing voice transmission services must ensure that STS services are available to callers with speech disabilities throughout their service areas within two years of the publication in the Federal Register of this *Report and Order*.<sup>27</sup> The availability of STS gives persons with certain speech disabilities an efficient alternative to using a TTY, which requires the purchase and use of TTY hardware and which also can be a cumbersome form of conversation given the typing involved. We also noted that TRS providers would have an opportunity to formulate the most cost-effective basis on which STS service can be provided (*i.e.*, by coordinating or centralizing the service in regional speech-to-speech centers, rather than by attempting to provide independent services on a state-by-state basis).<sup>28</sup>

15. Discussion. We find that STS services fall within the scope of section 225's definition of "telecommunications relay services" as a telephone transmission service that enables an individual who has a speech disability to communicate by wire or radio in a manner that is functionally equivalent to the ability of a person who does not have a speech disability to communicate using voice communication services by wire or radio.<sup>29</sup> We adopt our tentative conclusion that all common carriers must provide STS relay services for callers with speech disabilities throughout their service areas. The majority of the commenters, including TRS providers, GTE, MCI, and Sprint, support this conclusion.<sup>30</sup>

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<sup>26</sup> *Notice*, 13 FCC Rcd at 14193.

<sup>27</sup> 47 U.S.C. § 225(a)(3).

<sup>28</sup> *Id.*

<sup>29</sup> *See Notice*, 13 FCC Rcd at 14196.

<sup>30</sup> *See* AIM Comments at 1; American Speech-Language-Hearing Association (ASHA) Comments at 2; Dr. Blackstone Comments at 1; CPUC Comments at 2; Ms. Davis Comments at 1; Ms. Fairman Comments at 1; Mr. Fleming Comments at 1; GTE Comments at 4; Dr. Gurdin Comments at 1; Ms. Ladew Comments at 1; Maryland Comments at 2; MCI Comments at 3; Missouri Comments at 2; National Association of the Deaf and the Consumer Action Network (NAD/CAN) Comments at 4; NCOD Comments at 1; NVRC Comments at 1; the President's Committee Comments at 5; Dr. Ratcliff Comments at 1; Dr. Segalman Comments at 1; Ms. Shipley Comments at 1; Sprint Comments at 5; Mr. Stoltz Comments at 2; Telecommunications for the Deaf, Inc. (TDI) Comments at 9-10; Self Help for Hard of Hearing People, Inc. (SHHH) Comments at 2-3; UCPA Comments at 2; ULS Comments at 3-4; Mr. Behnke Reply at 1; COR Reply at 6; Ms. Curtis Reply at 1; Mr. Goldstein Reply at 1; Ms. Hoyer Reply at 1; Mr. Kemp Reply at 1; Mr. Klibanow Reply at 1; Ms. Laughlin Reply at 1; Mr. Miller Reply at 1; Ms. Moore Reply at 1; Dr. Pray Reply at 1; Mr. Slay Reply at 1; Ms. Treece Reply at 1; Mr. Treece-Sinclair Reply at 1; Tri-County GLAD Reply at 1; UCPP Reply at 1.

16. As one commenter notes, "STS will help break the insularity barriers that confine members of the community of people with speech disabilities and offer them opportunities for education, employment, and other, more intangible benefits (freedom, joy, self-reliance) that are concomitant with independence."<sup>31</sup> Further, as GTE asserts, STS services will aid those with hearing or speech disabilities that also have physical disabilities that make the use of a TTY difficult or impossible.<sup>32</sup> In addition, we anticipate that the provision of STS will enhance the user's employment and educational opportunities and reduce the frustration experienced by individuals with speech disabilities when they cannot be understood on the phone and when others do not take time to communicate with them.<sup>33</sup> As one party observes, "STS provides an optional and effective communications bridge to employment options and opportunities for persons with speech disabilities who may experience significant disconnections and poor service response when placing calls via routine telephony."<sup>34</sup>

17. A number of commenters writing during the comment period in early fall of 1998 support the Commission's proposal to implement STS two years after the publication of the rules in the Federal Register.<sup>35</sup> Some commenters argue for a longer period.<sup>36</sup> A number of commenters, however, believe that more than enough time has passed without an STS requirement and urge the Commission to require STS within six months, with due haste, or within one year.<sup>37</sup> For example, one commenter notes that two years is too long, that vendors with STS capability should start providing STS within six months; and that where the vendor does not, the TRS provider should contract with another provider immediately.<sup>38</sup> Given that

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<sup>31</sup> See Ms. Keller Reply at 4.

<sup>32</sup> See GTE Comments at 4.

<sup>33</sup> See Notice, 13 FCC Rcd at 14196-97; ULS Comments at 3-4.

<sup>34</sup> See President's Committee Comments at 6.

<sup>35</sup> COR Comments at 6; TDI Comments at 6.

<sup>36</sup> See Ameritech Comments at 3-4 (extend deadline to three years; FPSC Comments at 2 (implementation should coincide with current contract renewal dates); GTE Comments at 6 (schedule implementation based on states' ability to provide funding); SBC Comments at 5 (if mandatory STS, extend implementation to at least five years).

<sup>37</sup> See Ms. Andrews Comments at 2 (implement with "due haste"); Mr. Nelson Reply at 2 (require within six months); Sprint Reply at 4 (reduce implementation to one year).

<sup>38</sup> David Nelson Reply Comments at 1-2.

more than two years have passed since we adopted the *Notice*, we agree with commenters that waiting another two years to require STS is unnecessary and would not result in bringing people with disabilities functionally equivalent service in an efficient manner. Implementation of STS does not require new equipment. We believe that one additional year will be adequate for providers to train personnel to deliver STS services. Parties claiming they need a ramp-up period can use the time prior to the deadline to ensure sufficient staffing is available in the STS centers. Ten states are already providing STS, and therefore presumably already have qualified personnel.<sup>39</sup> Moreover, we expect, most STS service will be provided through regional centers, thus reducing the total number of qualified individuals necessary to handle the expected demand. We therefore require that STS be provided by March 1, 2001.

18. In response to some carriers' concerns that demand is too low to justify the service,<sup>40</sup> we note that section 225 charges the Commission with ensuring that "interstate and intrastate telecommunications relay services are available to the extent possible. . . to hearing-impaired and speech-impaired individuals in the United States." We believe that nationwide availability of STS is possible, and we are therefore obligated to require it. In addition, it will allow people with speech disabilities, an underserved segment of our society, to use telecommunication services independently, perhaps for the first time. We also believe that use of STS will increase with aggressive outreach efforts to the nation's 2.7 million citizens with speech disabilities.<sup>41</sup> California indicates that the volume of its calls increased and the length of the calls decreased as users became more familiar and comfortable with the service.<sup>42</sup>

19. We agree with those commenters who state that the significant benefits that STS service offers to people with severe speech disabilities, an insular community that has been, for the most part, denied access to the telephone network, greatly outweigh the costs of STS services.<sup>43</sup> We agree with Sprint that no information has been presented that demonstrates that STS is too costly relative to the benefit derived from STS.<sup>44</sup>

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<sup>39</sup> States currently offering STS include Arizona, California, Georgia, Illinois, Maryland, Minnesota, Nevada, South Carolina, Washington and Wisconsin. States that plan to offer STS in the near future include North Carolina and Texas.

<sup>40</sup> See AT&T Comments at 4-5; Bell Atlantic Comments at 3-4; IPUC Comments at 4-5; SBC Reply at 3.

<sup>41</sup> See TDI Reply at 5.

<sup>42</sup> See CPUC's DDTP Comments at 2.

<sup>43</sup> See AIM Comments at 1; Ms. Keller Reply at 4.

<sup>44</sup> See Sprint Reply at 2.

20. As suggested by numerous commenters, we encourage states to consider offering the service through regional or national centers. Maryland indicates that its STS calls, currently totaling less than 1% of TRS calls, are handled effectively through a regional center and that the creation of regional centers is the most cost effective method to provide STS.<sup>45</sup> ASHA suggests that STS services should be provided in national or regional centers, accessible by a toll-free number, so that CAs can be "concentrated and counseled" by experts.<sup>46</sup>

### c. Video Relay Interpreting

21. Background. Video relay interpreting, or VRI, allows TRS users with hearing or speech disabilities to communicate with voice telephone users through video equipment installed at the user's premises and at the relay center. This video link allows a CA to view and interpret the caller's sign language and relay the conversation to a voice caller. In the *Notice*, we tentatively concluded that VRI should be considered a relay service within the meaning of section 225 and, therefore, that the costs of VRI should be recoverable.<sup>47</sup> We also tentatively concluded that VRI should not be mandated by the Commission's TRS rules at this time but that we should continue to monitor the state of VRI technology.<sup>48</sup>

22. Discussion. We adopt our tentative conclusion that VRI is a telecommunications relay service because it provides the ability for individuals with hearing or speech disabilities "to communicate by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing impairment or speech impairment to communicate using voice communications services by wire or radio."<sup>49</sup> While we do not require VRI at this time, as the service remains in its technological infancy, we adopt special funding arrangements for VRI service, where it is provided, by allowing the costs of all calls - both intrastate and interstate - to be reimbursed from the interstate TRS Fund, while we continue to evaluate the issues surrounding mandating VRI service.

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<sup>45</sup> See Maryland Comments at 2-3.

<sup>46</sup> See ASHA Comments at 6.

<sup>47</sup> See *Notice*, 13 FCC Rcd at 14201.

<sup>48</sup> *Id.* at 14200.

<sup>49</sup> 47 U.S.C. § 225(a)(3).

23. While we disagree with those commenters who argue that we should require VRI,<sup>50</sup> we agree with commenters who argue that VRI will make relay services functionally equivalent to conventional telephone services for individuals whose first language is American Sign Language.<sup>51</sup> We do, however, share the concerns of those parties that argue that there are technological uncertainties that make a mandatory requirement for VRI premature.<sup>52</sup> VRI is under development using a number of equipment configurations and there may be unresolved issues of compatibility between the relay center's equipment and the caller's equipment. VRI cannot be utilized by simply dialing a number from the telephone. One VRI equipment configuration, for example, involves the use of personal computer and videoconferencing equipment along with access to broadband transmission services. We are concerned that mandating VRI on a widespread basis at this early stage in its technological development could stymie experimentation with different technologies. We believe that allowing experimentation will result in better VRI, and therefore complies with the statutory mandate that TRS services are to be provided to "the extent possible" and in the "most efficient manner."<sup>53</sup> We believe that the approach we take here permits market forces, not the Commission, to determine the technology and equipment best suited for the provision of VRI, and allows for the development of new and improved technology.

24. We recognize the enormous potential VRI holds for consumers. In order to encourage this new technology, as is our statutory mandate, and in recognition of concerns about the costs of the service and the potentially inadequate supply of qualified interpreters,<sup>54</sup> we intend to establish special funding arrangements for VRI to speed its development. During the development of this new relay service, we will permit recovery of costs associated with both intrastate and interstate calls from the interstate TRS Fund. Because there are relay centers currently providing VRI or planning to provide it in the near future,<sup>55</sup> our approach has the

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<sup>50</sup> See the Federation Comments at 2; MATP Comments at 2 (should require VRI in two year plan proposed for STS); NAD/CAN Comments at 5-8 (VRI should be phased in, rather than immediately deployed); NVRC Comments at 1 (support phasing in of VRI immediately and supporting it 24 hours per day); TDI Comments at 6-7; Mr. Nelson Reply at 2 (mandate VRI within two years).

<sup>51</sup> See NAD/CAN Comments at 5 (citing NOI Reply Comments of NAD at 7 (citing Comments of Southwestern Bell Telephone Company at 5-6; GTE at 9-10; Kansas Relay Service, Inc. at 4; MCI at 4)).

<sup>52</sup> See, e.g., Ameritech Comments at 4, GTE Comments at 7; Sprint Comments at 9.

<sup>53</sup> 47 U.S.C. § 225(b)(1).

<sup>54</sup> See, e.g., Ameritech Comments at 4, GTE Comments at 7; Sprint Comments at 9.

<sup>55</sup> David Nelson Reply Comments at 2.

potential to quickly give all consumers who can access it the benefit of video relay service. We also believe our approach will reduce costs and spur industry and consumer investment in the equipment and technologies necessary to use VRI, without burdening state relay programs or engendering any of the risks associated with mandating the use of equipment that has not been fully tested in the market place.<sup>56</sup>

25. Given that demand for VRI will be low initially, because the service is in its infancy, we believe it makes sense to aggregate demand as much as possible to those centers interested in offering VRI. It is not efficient to have relay interpreters associated with one state or an interstate relay center with down time while there are people throughout the country who want to make calls through VRI but cannot because of the jurisdictional cost recovery rules.

26. The statute permits this action. Section 225(d)(3) states that the Commission's regulations "shall *generally provide* that costs caused by interstate telecommunications relay services shall be recovered from all subscribers for every interstate service and costs caused by intrastate telecommunications relay services shall be recovered from the intrastate jurisdiction (emphasis added)."<sup>57</sup> We believe the word "generally" gives to the Commission some discretion to fund intrastate service from the interstate jurisdiction. We believe that our action, intended as an interim arrangement, is an appropriate exercise of this discretion. First, VRI is necessary to provide many people with disabilities relay service that is functionally equivalent to voice communications. Second, this action is consistent with our statutory mandate to encourage the use of existing technology and not to discourage or impair the development of improved technology in the delivery of relay services.<sup>58</sup> Third, it allows us to assess demand and let market forces determine the technologies of choice for delivery of VRI, while not depriving any consumer who is willing to invest in new technologies the ability to make any call, not just an interstate call. We believe that this temporary cost recovery scheme will help to ensure that any consumer who has invested in the necessary video equipment and broadband services will be able to use VRI to call his own doctor locally, as well as make long distance calls that may not be as critical to his well-being.

27. This funding scheme is a temporary arrangement. When VRI develops to the point where it can be required, as we expect it will, we intend to revert to the traditional cost recovery mechanism. We will not establish a particular date for that transition. Instead, we will

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<sup>56</sup> See NAD/CAN Comments at 7.

<sup>57</sup> 47 U.S.C. § 225(d)(3).

<sup>58</sup> *Id.* at § 225(c)(2).

continue to assess the availability of the service and its technological development and determine at some point in the future when it best can be funded in the traditional manner.

#### **d. Non-English Language Relay Services**

28. Background. Non-English language relay services<sup>59</sup> allow persons with hearing and speech disabilities who use languages other than English to communicate with voice telephone users in a shared language other than English, through a CA who is fluent in that language. In the *Notice*, we tentatively concluded that such services are "telecommunications relay services" as defined in section 225.

29. Discussion. As is supported by a number of commenters, we find that any non-English language relay services which relay conversations in a shared language are telecommunications relay services, and therefore can be reimbursed from the relay funds. In addition, we will require interstate common carriers to provide interstate Spanish relay service by March 1, 2001.<sup>60</sup>

30. Just as the voice telephone network allows for a Spanish speaking user to call a parent and speak in Spanish, TRS users should have the same functional equivalency. As this Commission has previously noted, Spanish is the most widely spoken non-English language in the United States. The number of Spanish speaking persons is significantly larger than any other non-English speaking population and is rapidly growing.<sup>61</sup> We believe this warrants the availability of interstate Spanish relay service. Both intrastate and interstate Spanish relay service is available in 18 states that have recognized the need for Spanish language relay service. We decline to decide at this time whether other forms of non-English TRS will be mandated. While we are mandating only interstate Spanish relay service, we find that any non-English language relay service provided by an interstate relay provider is reimbursable from the interstate TRS Fund.

31. We are not requiring each state to offer intrastate Spanish, or any other non-English language, relay services. The need for non-English relay services varies greatly by state

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<sup>59</sup> We referred to these as multilingual relay services (MRS) in the *Notice*.

<sup>60</sup> See, e.g., UCPA Comments at 2 (Commission should mandate multilingual relay service while giving TRS administrators the authority to decide the various languages offered depending on state needs and population demographics).

<sup>61</sup> In the Matter of Closed Captioning and Video Description of Video Programming, Order on Reconsideration, 13 FCC Rcd 19973, 20015 (1998).

and is best left to the discretion of each state. We do, as recommended by commenters, urge states to continue to be sensitive to changes in local demographics that may warrant the addition of non-English relay services.<sup>62</sup> We agree with the commenter who notes that, should states fail to act when the need arises, there will be an adverse effect on the personal and economic well-being of individuals who speak a language other than English, making employment and education more difficult for them to attain.<sup>63</sup>

#### e. Cost Recovery

32. Background. Pursuant to our rules, the interstate TRS Fund is administered by the National Exchange Carrier Association (the Fund Administrator), with the advice of the Interstate TRS Fund Advisory Council. The Council has members representing TRS users, providers, interstate carriers, and members of the disability community. In the *Notice*, we tentatively concluded that the Interstate TRS Fund Advisory Council should develop guidelines for interstate cost-recovery for the changes to TRS adopted in response to this Order, within 6 months of the adoption of the Order. We asked commenters to discuss the issues that the Advisory Council should consider in formulating these guidelines and to provide specific language for guidelines in support of their recommendations.<sup>64</sup>

33. Discussion. As supported by commenters, we require the Fund Administrator and the interstate TRS Fund Advisory Council develop guidelines for cost-recovery based on this Order within six months of its publication in the Federal Register.<sup>65</sup> The Fund Administrator and the Council should consider the comments regarding the guidelines raised in this rulemaking.<sup>66</sup> The public will have an opportunity to comment on the guidelines before the Commission's final approval is given. To provide this opportunity for public comment, the Commission will place the proposed guidelines it receives on public notice.

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<sup>62</sup> See Ms. Andrews Comments at 2.

<sup>63</sup> *Id.*

<sup>64</sup> See 13 FCC Rcd at 14194.

<sup>65</sup> See Ms. Andrews Comments at 1; AIM Comments at 1; Dr. Blackstone Comments at 1; Ms. Fairman Comments at 1; the Federation Comments at 2; Mr. Fleming Comments at 1; FPSC Comments at 2; Mr. Gregory Comments at 6; Ms. Ladew Comments at 1; MCI Comments at 3; NCOD Comments at 1; NVRC Comments at 1; the President's Committee Comments at 5; Dr. Ratcliff Comments at 1; Dr. Segalman Comments at 1; Sprint Comments at 5; Mr. Stolz Comments at 2 (conditioning his support upon protection against the funding of voluntary projects that may not be in the best interest of improved TRS service); Texas PUC Comments at 3; COR Reply at 5; Mr. Travers Reply at 2.

<sup>66</sup> See AIM Comments at 1.

## 2. Competition in Intrastate Relay Services

34. Background. Our rules allow common carriers to provide TRS within their service areas "individually, through a competitively selected vendor, or in concert with other carriers."<sup>67</sup> Currently, most carriers and states comply with this rule by competitively selecting a relay provider through a request for proposal contracting process. The cost of the intrastate TRS service contract generally is recovered from all ratepayers in the state, either through an intrastate subscriber line surcharge or through the general ratemaking process. TRS users are required to use their state's chosen TRS provider for intrastate calling. Interstate TRS service is funded by a nationwide, interstate TRS Fund. Callers may make interstate calls through their state's provider or choose another TRS provider for interstate calls by dialing one of several national toll-free numbers.

35. In the *Notice*, we observed that many commenters representing TRS users urged the Commission to take steps to require or promote competition through multivendoring. Multivendoring would enable multiple vendors to receive compensation for providing TRS in the same jurisdiction as a means to improve TRS service quality.<sup>68</sup> While our *Notice* did not propose requiring states or carriers to contract with more than one TRS provider, we invited comment on: (a) the Commission's jurisdiction to require intrastate multivendoring; (b) the relationship, if any, between the single-vendor model and perceived problems with intrastate TRS; and (c) the structuring of an intrastate multivendor environment.<sup>69</sup>

36. Discussion. We agree with commenters that competitive forces are generally the preferred way to improve service quality and bring new services to customers.<sup>70</sup> Although using a single vendor may not automatically lead to poor service quality,<sup>71</sup> we believe that giving consumers a choice among different TRS providers might well improve the quality of TRS service in different states. We note that nothing in the statute or the Commission's rules restricts the states to using only one relay provider. Recognizing that one purpose of the Telecommunications Act of 1996 ("1996

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<sup>67</sup> 47 C.F.R. § 64.603.

<sup>68</sup> *Notice*, 13 FCC Rcd at 14212 (citing AGC Comments at 2; ALDA Comments at 1-2; AOAC Comments at 2; DCADC-VAD Comments at 1-2; NAD Comments at 2; NVRC Comments at 2; SHHH Comments at 2).

<sup>69</sup> *Id.* at 14213.

<sup>70</sup> *See, e.g.*, AIM Comments at 2; Federation Comments at 5; NVRC Comments at 3; Mr. Sonnenstrahl Comments at 4-5; UCPA Comments at 3; Mr. Ching Reply at 5; DADC Reply Comments at 2.

<sup>71</sup> Texas PUC Comments at 15 (reporting that no degradation of TRS service quality has been caused by its use of the single-vendor model).

Act")<sup>72</sup> is to facilitate the introduction of competition to telecommunications markets,<sup>73</sup> we encourage states to consider whether the single- or the multi-vendoring model best meets their constituents' particular needs.<sup>74</sup>

37. We note that some states have unsuccessfully experimented with approaches to multivendoring. California, for example, contracted for relay service from the two lowest-cost TRS providers in the state. The lowest bidder was unable to provide acceptable relay service at the price agreed upon. After many consumer complaints, the state increased its payments to that provider in order to increase the quality of the relay service to minimum levels.<sup>75</sup> Some parties have contended that the failure of California's approach to multivendoring demonstrates that multivendoring is not feasible in the TRS market. We are not convinced by these arguments. The failure of this experiment may instead have resulted from the PSC's acceptance of an unrealistically low bid, and its attempt to require other competitors to match the low bidder's rates. Thus, we encourage states to continue experimenting with ways to allow competitive forces to improve the quality of TRS service.

### 3. Service Quality

#### a. Minimum Standards Generally

38. Background. The Commission's rules currently provide mandatory minimum service quality standards for the provision of both interstate and intrastate TRS.<sup>76</sup> In our *Notice*, we tentatively concluded that only services that are mandated by Commission regulation must comply with the Commission's minimum standards.<sup>77</sup> In addition, we tentatively concluded that some relay services such as STS might have operational differences that make compliance with current

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<sup>72</sup> Pub. L. No. 104-104, 110 Stat. 96 (1996) (codified at 47 U.S.C. §§ 151 et seq.).

<sup>73</sup> Through the 1996 Act, Congress sought to establish a "pro-competitive, de-regulatory national policy framework" for the United States telecommunications industry. *See* Jt. Statement of Managers, S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 1 (1996).

<sup>74</sup> KRSI Comments at 12; Mr. Nelson Reply Comments at 5; Mr. Stoltz Comments at 5. All these parties assert the decision of how many intrastate vendors should serve a state is a matter for state determination.

<sup>75</sup> CAPUC Comments at 4-5.

<sup>76</sup> 47 C.F.R. § 64.604.

<sup>77</sup> *See Notice*, 13 FCC Rcd at 14194.

Commission standards infeasible, or require different standards.<sup>78</sup> Therefore, we requested an examination of the Commission's rules governing mandatory minimum standards for TRS, and sought comment upon whether any specific exceptions to those rules must be made for STS service, in light of the unique nature of the service.<sup>79</sup>

39. Discussion. We conclude that all relay services either mandated by the Commission or eligible for reimbursement from the interstate TRS Fund must comply with the mandatory minimum standards. We are persuaded by commenters who argue that it is appropriate to have national minimum standards whenever the interstate TRS Fund is being used to support the provision of a relay service.<sup>80</sup> Subject to the exceptions laid out in this Order, the minimum standards, as amended in this Order, will apply to these relay services.

40. We agree with many commenters that not all of our existing standards will be appropriate for each type of relay service, and that the way certain services are provided will necessitate somewhat different rules for these different services.<sup>81</sup> With respect to STS, VRI, and non-English relay service, we are adapting the existing minimum standards to the extent necessary, as discussed below, to make them appropriate for particular services. We will continue to address the applicability of the mandatory minimum standards to new offerings in the context of approving them as relay services.<sup>82</sup>

41. We conclude that STS service will generally be subject to our mandatory minimum standards with the exception of the following standards: competent skills in typing and spelling for CAs;<sup>83</sup> capability of communicating with ASCII and Baudot format, at any speed generally in use.<sup>84</sup>

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<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> NAD Comments at 8.

<sup>81</sup> See Dr. Blackstone Comments at 1; Ms. Fairman Comments at 1; Mr. Fleming Comments at 1-2; KRSI Comments at 4; Ms. Ladew Comments at 1-2; NAD/CAN Comments at 4; Dr. Ratliff Comments at 1; SBC Comments at 4-5; Dr. Segalman Comments at 1-2; UCPA Comments at 3-4.

<sup>82</sup> Some commenters recommend that states relax the service quality standards during the first six months of offering STS to develop call demand information from which to forecast staffing needs. After the six-month period, they argue that providers should be able to meet the average speed of answer and blockage requirements of conventional TRS. See CPUC's Deaf and Disabled Telecommunications Program (DDPT) Comments at 3. We disagree. We believe that it is appropriate to implement minimum standards for STS at this time.

<sup>83</sup> 47 C.F.R. § 64.604(a).

and the transmission of conversations between TTY and voice callers in real time.<sup>85</sup> These requirements cannot practicably be applied to STS because of the significant differences in the way this service is provided compared to TTY-based TRS.

42. We also conclude that VRI relay will generally be subject to our mandatory minimum standards with the exception of the following standards: competent skills in typing and spelling for CAs;<sup>86</sup> capability of communicating with ASCII and Baudot format, at any speed generally in use;<sup>87</sup> the transmission of conversations between TTY and voice callers in real time.<sup>88</sup> These requirements cannot practicably be applied to VRI because of the significant differences in the way this service is provided compared to TTY-based TRS. And, because VRI will be offered on a voluntary basis, we will not require it to operate every day, 24 hours a day.<sup>89</sup> Other changes to our rules are discussed below.

#### **b. Communications Assistant**

43. Background. The current rule defines a communications assistant as “[a] person who transliterates conversation from text to voice and from voice to text between two end users of TRS.”<sup>90</sup> In the *Notice*, we tentatively concluded that the current definition of Communications Assistant is too restrictive to encompass some of the activities that may be required of a CA involved in some TRS offerings.<sup>91</sup> We proposed to amend the current definition by removing the words “from text to voice and from voice to text” while maintaining the remainder of the definition.<sup>92</sup>

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<sup>84</sup> *Id.* at § 64.604(b).

<sup>85</sup> *Id.* at § 64.604(b)(4).

<sup>86</sup> *Id.* at § 64.604(a).

<sup>87</sup> *Id.* at § 64.604(b).

<sup>88</sup> *Id.* at § 64.604(b)(4).

<sup>89</sup> *Id.*

<sup>90</sup> 47 C.F.R. § 64.601(5). According to Webster, to transliterate is to “represent or spell in the characters of another alphabet.” CAs are required to relay all conversation verbatim unless the relay user specifically requests summarization. 47 C.F.R. § 64.604(a)(2)(“Confidentiality and Conversation Content”).

<sup>91</sup> *See Notice*, 13 FCC Rcd at 14194.

<sup>92</sup> *See Notice*, 13 FCC Rcd at 14195.

44. Discussion. We adopt our proposal, supported by commenters, to remove the words "from text to voice and from voice to text" from the definition of CA.<sup>93</sup> We also adopt Texas PUC's proposal to allow CAs to "transliterate," or interpret, a caller's use of American Sign Language, or ASL, to English. Thus, the new definition will read, "[a] person who transliterates or interprets conversation between two end users of TRS." We believe this definition, which is supported by commenters,<sup>94</sup> is broad enough to encompass the activities performed by an individual assisting in the provision of TRS that does not involve a TTY, such as STS or VRI.

45. We also note that this definition is consistent with section 64.604(a) of our rules, which requires that CAs have competent skills in, among other things, interpretation of typewritten ASL.<sup>95</sup> Our TRS rules define American Sign Language as a visual language based on hand shape, position, movement, and orientation of the hands in relation to each other and the body.<sup>96</sup> ASL is not a written or text-based language and it is unique to the deaf community. When a message in ASL is converted to typed text, the words are typed in English, but the sentence structure (grammar, syntax, *etc.*) will be different than if someone fluent in spoken English had typed the same message.

46. We reiterate that our rules contemplate that, where a TTY user's message is in ASL, the CA will, upon request of the TTY user, repeat the message to the hearing person using standard spoken English, and the CA will repeat the hearing person's message by typing in ASL to the TTY user. Because the grammar and syntax of ASL are different from English, if this were not done, the hearing party may not understand the information as well as if it is presented in English, and vice versa. The communication would then not be functionally equivalent to voice communications, as required by the statute. This also resolves the question raised in the *Notice* as to whether a service involving the translation of ASL to English is a relay service.<sup>97</sup>

### c. Qualified Interpreter

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<sup>93</sup> See ASHA Comments at 4-5; Missouri Comments at 2-3.

<sup>94</sup> See AIM Comments at 1; Sprint Comments at 7; Mr. Stolz Comments at 2.

<sup>95</sup> 47 C.F.R. § 64.604(a).

<sup>96</sup> *Id.* at § 64.601(1).

<sup>97</sup> *Notice*, 13 FCC Rcd at 14202.

47. Background. In the interest of ensuring effective communication for VRI users, we proposed to incorporate into our TRS rules the definition of “qualified interpreter,” as used by the Department of Justice in its Title II and III regulations, and require the use of qualified interpreters in the delivery of VRI relay service.<sup>98</sup> The Department of Justice defines “qualified interpreter” under its regulations as “an interpreter who is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary.”<sup>99</sup>

48. Discussion. We adopt our proposal, supported by commenters, to apply the Department of Justice’s definition of qualified interpreter to VRI.<sup>100</sup> We amend our rules to require that VRI CAs be qualified interpreters. We believe that this requirement will protect users of VRI from encountering interpreters who do not have the skills necessary to effectively interpret a VRI call. We do not believe it wise to have each state determine its own minimum qualifications, without a federal minimum, as is suggested by Sprint.<sup>101</sup> States are free to adopt stronger standards, but, as with other areas that affect service quality, we have an obligation to establish uniform, minimum standards. In addition, the federal standard will encourage efficient, national centers for the delivery of VRI.

#### **d. Retention of a Record of a Call**

49. Background. Section 225 requires the Commission to adopt rules that “prohibit relay operators . . . from keeping records of the content of any such conversation beyond the duration of the call.”<sup>102</sup> To implement that requirement, our current rules state that CAs are prohibited from keeping records of the content of any conversation beyond the duration of a call.<sup>103</sup> Because the STS user often speaks slowly and with difficulty, commenters propose a modification to this rule to allow the STS CA to retain information in instances where a STS user wants to use the same information to make consecutive calls. For example, a person with a speech disability may want

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<sup>98</sup> *Id.* at 14201.

<sup>99</sup> 28 C.F.R. § 35.104.

<sup>100</sup> See ASHA Comments at 5; AIM Comments at 1; NAD/CAN Comments at 8 (citing *Notice* at paras. 34 and 17); Mr. Stoltz Comments at 3; COR Reply at 8; the Federation Comments at 2; TDI Reply at 7; ULS Comments at 4.

<sup>101</sup> See Sprint Comments at 9.

<sup>102</sup> 47 U.S.C. § 225(d)(1)(F).

<sup>103</sup> 47 C.F.R. § 64.604(a)(2).

to use the relay service to call several different doctors to find out which doctor accepts a particular insurance plan. Under these circumstances, the caller may request that the CA retain the information the caller gave to the first called party in order to repeat it to the subsequent called parties.

50. Discussion. We agree with commenters that an STS CA should be permitted to retain information from a particular call in order to facilitate the completion of consecutive calls at the request of the calling party.<sup>104</sup> We therefore amend our rule accordingly. Though designed to protect the privacy of the parties, the unamended rule substantially reduced the efficiencies that could be attained in an STS call. Under the amended rule, the caller may ask the CA to retain a record of a call. Alternatively, upon realizing that the caller wants to convey the same information to several different numbers, the CA may ask the caller if he wants the CA to retain a record in order to repeat the same information in subsequent calls. The CA may retain the information only for as long as it takes to complete the subsequent calls.

51. We believe that this kind of situation is consistent with the statute because it can only be done at the caller's request. Without this amended rule, the user, who has difficulty speaking, would have to repeat the information several times, placing a burden on the caller, and also causing the calls to be longer than necessary. In addition, the period of record retention is limited, the confidentiality and privacy of the caller are maintained, and the choice to retain the record is made by the caller.

#### **e. Frequently Called Numbers for STS Users**

52. Based on commenters' requests, we believe that an additional minimum standard is appropriate for STS. As suggested by commenters, we will require that relay providers offer STS users the option to maintain at the relay center a list of names and telephone numbers which the STS user frequently calls.<sup>105</sup> STS CAs may have difficulty understanding the name and telephone number of the person that the STS user is calling and, unlike other utterances, this information has no context. Because the STS CA would have access to the STS user's list of frequently called names and phone numbers, the STS user could request that a call be placed to a particular person without having to state the telephone number. After the STS user names the called party, the STS CA shall repeat the name and state the telephone number of the called party to ensure that the STS CA places the call to the correct party and phone number. Consistent with

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<sup>104</sup> Dr. Sarah Blackstone Comments at 4; Bruce Fleming, BSE, Comments at 4; LuRetta Fairman Comments at 3; Rebecca Ladew Comments at 4.

<sup>105</sup> *See, e.g.*, Rebecca Ladew Comments at 6.

our discussion of customer information, *supra*, this information shall be treated as customer profile information and therefore must be transferred to a new provider as necessary.

#### **f. Confidentiality**

53. Background. Section 225 requires the Commission to adopt rules that prohibit relay operators from disclosing the content of any relayed conversation. To that end, our current rules prohibit a CA from “disclosing the content of any relayed conversation regardless of content...even if to do so would be inconsistent with state or local law.”<sup>106</sup> In adopting this rule, the Commission noted that it “believe[s] that confidentiality is essential to [relay] service, and that users of TRS can have confidence in the basic privacy of their conversations.”<sup>107</sup> With respect to VRI, there are additional confidentiality concerns as the anonymity of the traditional TRS conversation is lost by the visual contact between the user and the interpreter.<sup>108</sup> As a result, with VRI the probability that the interpreter will be able to identify or recognize the caller is much greater than in traditional TRS. Further, if the interpreter were placed in a position in which others could see her, the VRI user’s private conversation could be seen by others.

54. Discussion. We are persuaded by commenters that we must amend our rules to require VRI providers to take appropriate measures to ensure that the confidentiality of VRI users is maintained.<sup>109</sup> This action is consistent with the statutory intent, evidenced in section 225(d)(1)(F), to preserve confidentiality, and with section 225’s requirement of functionally equivalent communications. Further, as noted above, the Commission has previously recognized that confidentiality and privacy are essential to relay service.<sup>110</sup> No commenters opposed this conclusion.

#### **g. Verbatim Relay of Conversations**

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<sup>106</sup> 47 C.F.R. § 64.604 (a)(2).

<sup>107</sup> See First Report and Order, 6 FCC Rcd at 4659.

<sup>108</sup> See ULS Comments at 4-5.

<sup>109</sup> See AIM Comments at 1; Ameritech Comments at 4-5; the Federation Comments at 2; Texas PUC Comments at 8; ULS Comments at 4; COR Reply at 8; TDI Reply at 7.

<sup>110</sup> 47 C.F.R. § 64.604(a)(2), (a)(3); *Notice*, 13 FCC Rcd at 14201.

55. Background. Section 225 requires the Commission to adopt rules that “prohibit relay operators from intentionally altering a relayed conversation.”<sup>111</sup> Our current rules add an additional requirement that CAs must relay all conversations verbatim unless the relay user specifically requests summarization.<sup>112</sup>

56. This requirement is intended to protect the user by ensuring that the message the user intends to convey is accurately conveyed to the other party. According to the State of California, which currently offers STS service, the STS CA works best if she facilitates the call rather than simply repeats the caller’s message verbatim.<sup>113</sup> This is an important distinction, and is necessary given the nature of the STS user’s disability. For example, if an STS user repeats a word several times before going to the next word, the CA should have the flexibility to eliminate the repetition. Many STS users also suffer from short term memory loss, and effective CAs can remind users of information they have already relayed or remind a user to leave her number on the machine.

57. Discussion. We are persuaded by commenters, who base their comments on experience with STS relay service, that the rule should be amended to permit the STS CA some flexibility in relaying the conversation. We will eliminate the requirement in our rules that the CA must relay the conversation “verbatim” for STS calls. This requirement is a barrier to effective STS relay service. CAs handling STS calls are nevertheless still prohibited from intentionally altering a relayed conversation.

58. This change will address the concerns of those commenters who point out that STS users may need some additional assistance from CAs to communicate their messages to called parties.<sup>114</sup> Our new rule will give the CA the necessary flexibility to accomplish the caller’s goal when making the call, but will retain the statutory requirement that the CA not intentionally alter the meaning of the conversation. We find that, although the current requirement is intended to make the CA transparent, it is at odds with the best role of the CA.

#### **h. Speed of Answer Requirements**

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<sup>111</sup> 47 U.S.C. § 225(d)(1)(G).

<sup>112</sup> 47 C.F.R. § 64.604(a)(2).

<sup>113</sup> DDTP Report to the CPUC at 3; Dr. Segalman Comments at 3.

<sup>114</sup> See Dr. Sarah Blackstone Comments at 3; LuRetta Fairman Comments at 2- 3; Bruce Fleming, BSE, Comments at 3; Rebecca Ladew Comments at 3; Dr. Segalman Comments at 3.

59. Background. Our current TRS speed-of-answer requirement provides that 85% of all calls shall be answered within ten seconds, and that no more than 30 seconds may elapse between receipt of dialing information and the dialing of the requested number. In response to our concern that the rule did not result in adequate speed of answer times due to inconsistencies in its interpretation, we proposed to change the rule to require TRS providers to ensure that 85% of all calls are answered within ten seconds by a CA prepared to place the TRS call at that time.<sup>115</sup> We further proposed to require that the calculation of whether a provider is in compliance with the 85%-10 second rule must be performed on at least a daily basis, and that the 10-second speed-of-answer time frame must begin when a call initially arrives at the TRS provider's network.<sup>116</sup> We did not propose to require that all abandoned calls<sup>117</sup> be counted in the speed of answer calculation, but did seek comment on how we could ensure that relay centers were properly staffed so that consumers' calls were not placed on hold waiting attention from a CA.

60. Discussion. For a TRS user, reaching a CA to place a relay call is the equivalent of picking up a phone and getting a dial tone. Any interpretation of our rule that delays a customer's ability to place a call through the relay center clearly compromises the functional equivalence of relay service. We will modify our rule to minimize the circumstances under which customers experience delays in placing their calls through relay services.

61. While many commenters supported our proposal to modify the rule to require 85% of all calls to be answered in ten seconds by a CA prepared to handle the call at the time,<sup>118</sup> others pointed out that this requirement would prohibit relay providers from capturing certain call setup information by automated processes which can, in fact, speed up the handling of calls.<sup>119</sup> We did not intend to inhibit the use of automated call handling processes. We will modify our proposal to accommodate automated call handling and adopt a rule to require 85% of all calls to be answered in ten seconds by any method which results in the TRS caller's call immediately being placed, not put in a queue or on hold. This new rule replaces the requirement that no more than thirty seconds

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<sup>115</sup> See Notice, 13 FCC Rcd at 14207.

<sup>116</sup> *Id.*

<sup>117</sup> Abandoned calls are those calls answered by a relay center, but never handled by a CA because the customer hangs up.

<sup>118</sup> See AIM Comments at 2; Ameritech Comments at 7; Bell Atlantic Comments at 6; Mr. Gregory Comments at 14; KRSI Comments at 8; MCI Comments at 6; NAD/CAN Comments at 14-15; NCOD Comments at 1; SBC Comments at 9; Mr. Stoltz Comments at 3; TDI Comments at 12; Texas PUC Comments at 11; ULS Comments at 6; COR Reply at 12.

<sup>119</sup> See AT&T Comments at 10; GTE Comments at 10; Sprint Comments at 11-12.

elapse between the receipt of dialing information and the dialing of the requested number, and replaces it with the requirement that the call must be immediately handled, whether by a CA or an automated process, but not placed in a call distribution queue.

62. We will also adopt the requirement that the 10-second limit begins at the time the call is delivered to the TRS center's network. The call is considered delivered to the TRS center's network when the relay center's equipment accepts the call from the LEC and the public switched network actually delivers the call to the TRS center. Any delays in the TRS center accepting the call from the local carrier will be captured in our call blocking standard discussed below.

63. A provider's compliance with the 85%-10 second rule will be measured on a daily basis. We disagree with Sprint and AT&T's argument that the measurement should be performed over a longer time frame to account for wide daily variations in traffic loads.<sup>120</sup> The burden should be on relay services to manage staffing needs based on the fluctuations in traffic, not on consumers to tolerate delays in reaching a CA when traffic is high. Just like voice calls, TRS calls should be answered within a reasonable time period, regardless of the traffic load. We are not persuaded by KRSI's argument that it should not be measured daily because it does not now generate the calculation on a daily basis.<sup>121</sup> Neither KRSI nor any other party claims that it cannot generate the needed data.

64. As we stated in the *Notice*, we continue to be concerned about the exclusion of abandoned calls – calls answered by the relay center, but never reaching an CA – from the “85-10” calculation. As no other solution was presented in the record, we will mandate that abandoned calls be included in the speed-of-answer calculation. While we continue to recognize that some calls will be abandoned by the caller for reasons that have nothing to do with the length of time it takes to reach a CA, we believe that the 85% minimum allows for those instances.<sup>122</sup> Compliance with the 85% standard will be measured by taking all calls that are answered within ten seconds of reaching the relay center's network in such a way that the call is immediately handled and dividing it by all calls answered by the relay center. Excluding these abandoned calls in speed-of-answer reports can distort the record of a TRS provider's actual performance by reducing the total number of calls from which the average speed-of-answer is calculated, thus indicating that the TRS provider's average speed of answer meets the minimum standard, even though consumers are kept waiting.<sup>123</sup>

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<sup>120</sup> See AT&T Comments at 11; Sprint Reply at 7.

<sup>121</sup> See KRSI Comments at 8.

<sup>122</sup> See *Notice*, 13 FCC Rcd at 14208.

<sup>123</sup> For example, if a provider receives a total of 1000 TRS calls a day, and 750 of those calls were answered within 10 seconds or less, the provider's speed-of-answer rate would be 75% and below the required minimum standard.

65. We note that even with these changes, customers might still be unable to reach the relay center. The LEC may not be able to deliver the call to the TRS center because all of the telephone trunks between the LEC and the TRS center are busy. Also, the TRS center might not answer the call because all CAs are busy and the relay center's internal queue is full. We agree with California's DDTP that we should add another component to the speed-of-answer measurement that will address these sources of delay. We will require calculations of the percentage of calls "blocked," or attempted by TRS users but never answered by the TRS center at all because of inadequate capacity into the facility, or staffing of the relay center.<sup>124</sup> We amend our rules to require that relay centers be designed to a P.01 standard.<sup>125</sup> This is a network design standard used to ensure that no more than 1% of calls at the busiest hour of the day are unable to be delivered to the relay center network due to inadequate facilities. In addition, we will require a minimum blockage standard, measured daily, of no greater than 1%. This call blockage rate shall be measured by dividing the number of blocked and not answered calls by the number of total call attempts. We believe that the blockage rate we adopt today provides an attainable, essential standard that will ensure that TRS providers meet the Commission's 85%-10 second requirement without preventing calls from reaching their network, or not answering calls. Failure to account for blocked and abandoned calls gives an incomplete assessment of service quality. We note that the data necessary to measure call attempt and blockage rates must be obtained from the Local Exchange Carrier (LEC) that serves the TRS center. Therefore, our rule will require LECs to provide the call attempt rates and the rates of calls blocked between the LEC and the relay center to relay administrators and relay centers upon request.

66. These new rules on speed of answer will protect consumers from delays in placing calls through TRS services. These new measurements will ensure calls are received and answered by

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But if 200 of those calls were abandoned by the caller before a CA came on-line to handle the call, and the provider were allowed to exclude these 200 abandoned calls from its speed-of-answer calculation (without knowing whether the calls were abandoned by the TRS user because no response was obtained from the TRS center within 10 seconds), then the provider could report an answer rate of 94% (750/800).

<sup>124</sup> See CPUC's DDPT Comments at 9.

<sup>125</sup> P.01 is defined as follows: "The Grade of Service for a telephone system. The digits following the P, *i.e.*, nn, indicate the number of calls per hundred that are or can be blocked by the system. It is a goal or a measure of an event. In this example, P01 (also spelled P.01) means one call in a hundred (*i.e.*, one divided by 100) can be blocked, so the system is designed to meet this criterion." Newton, Harry, *Newton's Telecom Dictionary*, Flatiron Publishing, New York, N.Y. (14th. ed. 1998), at p. 525. As it is used in the context of TRS quality, however, "P.01" requires that the network be designed to block only one call in one hundred, during the busy hour. For an explanation of traffic engineering techniques and quality standards to accommodate the busy hour, *See* Bates, Regis J., and Gregory, Donald, *Voice and Data Communications Handbook*, McGraw-Hill Company, New York (Signature Ed. 1997), at ch. 8.

relay centers as quickly as possible, thereby giving TRS users functionally equivalent service. We believe this rule will result in more calls answered quickly than if we simply increase the percentage from 85% to 90% or 95%, as suggested by some commenters.<sup>126</sup> Of course, as with our other mandatory minimum standards for TRS, state TRS authorities remain free to strengthen this minimum requirement at their discretion.

#### **i. In-Call Replacement of Communication Assistants and Choice of Gender**

67. Background. In the *Notice*, we tentatively concluded that we should amend our rules to require that a CA answering and placing a TRS call must stay with that call for at least ten minutes before an in-call CA transfer can take place. In particular, we asked commenters to discuss whether a ten-minute time period adequately balances the need to minimize call disruptions with the need to prevent CA fatigue, or whether the minimum period of call coverage by the same CA should be shorter (five minutes) or longer (fifteen minutes).<sup>127</sup> We also sought comment on whether the proposed rule regarding CA transfers would conflict with any federal, state, or local labor laws or regulations.<sup>128</sup> In addition, we tentatively concluded that we should not establish a rule to permit TRS users to request a specific CA gender during a CA transfer, although we strongly encouraged providers to offer this option.<sup>129</sup>

68. Discussion. We adopt our conclusion to require that a CA answering and placing a TTY TRS call must stay with the call for a minimum of ten minutes, as preferred by a majority of commenters.<sup>130</sup> The ten-minute requirement reduces potential disruption and will make the call more functionally equivalent to voice telephone calls. Several TRS providers, however, oppose this requirement,<sup>131</sup> arguing that if adopted, this requirement will mean that CAs cannot start the

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<sup>126</sup> See Ms. Andrews Comments at 2 (increase requirement to a minimum of 90% of TRS calls); the Federation Comments at 3 (proposed requirement is nowhere near being functionally equivalent); FPSC Comments at 8 (increase requirement to a minimum of 90% of TRS calls); SHHH Comments at 7 (standard should be 95% within 10 seconds); NVRC Reply at 2 (phase in standard that would reduce speed-of-answer time to three seconds or less).

<sup>127</sup> See *Notice*, 13 FCC Rcd at 14211.

<sup>128</sup> See *Id.* at 14211-12.

<sup>129</sup> See *Id.* at 14212.

<sup>130</sup> See AIM Comments at 2; Ms. Andrews Comments at 4; NAD/CAN Comments at 19; SHHH Comments at 10; Mr. Sonnenstrahl Comments at 4; Mr. Stoltz Comments at 5; TDI Comments at 16; COR Reply at 14; Mr. Nelson Reply at 5.

<sup>131</sup> See Ameritech Comments at 9-10; AT&T Comments at 13; GTE Comments at 12; KRSI Comments at 10; SBC Comments at 10; SBC Reply at 5.

handling of calls during the last ten minutes of their shifts and that the next shift will have to report ten minutes earlier.<sup>132</sup> AT&T contends that this requirement is not supported by the record or public policy and will interfere with the providers' ability to "deploy their CA work forces so as to properly serve their customers' call volumes."<sup>133</sup> We disagree. CAs answering calls during the last ten minutes of their shifts often will be able to complete those calls before their shifts end, or very shortly thereafter.

69. The record shows that most TTY TRS calls last for less than ten minutes.<sup>134</sup> We do not believe that a shorter,<sup>135</sup> or longer,<sup>136</sup> time limit is necessary, at this time. A shorter time limit, we believe, would not adequately address our concerns of in-call transfers that occur within the first few minutes of a TRS call, and a longer time limit might pose concerns of CA fatigue.<sup>137</sup> We do not find it necessary to adopt KRSI's recommendation to limit the percentage of calls during the day that have a change in CAs within 10 minutes because we are requiring a minimum of 10 minutes.<sup>138</sup>

70. With respect to STS relay, we believe that it is appropriate to have a longer limit. Commenters report that changing CAs can be particularly disruptive to users with speech disabilities.<sup>139</sup> Commenters point out that, during the initial stages of a call, there is a "settling-in" time wherein the caller and the CA get accustomed to each other.<sup>140</sup> During this time, callers with speech disabilities develop greater assurance that the CA will understand them.<sup>141</sup> Rotation of a CA during an STS call disrupts this assurance, and may even cause the user to speak less

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<sup>132</sup> See AT&T Comments at 12.

<sup>133</sup> *Id.*

<sup>134</sup> See GTE Comments at 12; NVRC Comments at 3.

<sup>135</sup> See Ameritech Comments at 10; GTE Comments at 12.

<sup>136</sup> See the Federation Comments at 4-5; NVRC Comments at 3; ULS Comments at 8; Ms. Keller Reply at 11; Mr. Nelson Reply at 5.

<sup>137</sup> In the future, CA fatigue might not be an issue because of advances in the use of technology.

<sup>138</sup> See KRSI Comments at 10-11.

<sup>139</sup> DDTP Comments at 4; Dr. Segalman Comments at 8-9.

<sup>140</sup> Dr. Sarah Blackstone Comments at 7-8; LuRetta Fairman Comments at 6; Bruce Fleming Comments at 8; Rebecca Ladew Comments at 8.

<sup>141</sup> *Id.*

clearly.<sup>142</sup> For these reasons, we find that STS CAs must stay with a call for at least fifteen minutes.

71. We also amend our rules to require that TRS providers make best efforts to accommodate a TRS user's desired CA gender. When a call is initiated, or during a transfer, TRS providers must attempt to accommodate a TRS user request for a specific CA gender. We believe this is necessary in order to have functionally equivalent communications because voice users know the gender of the party they are conversing with, and TRS users should have the same treatment.<sup>143</sup>

#### **j. Minimum Typing Speed**

72. Background. Currently, our rules require CAs to have "competent skills in typing, grammar, spelling, interpretation of typewritten ASL, and familiarity with hearing and speech disability cultures, language and etiquette."<sup>144</sup> Although we were very concerned about allegations of variance in TRS quality, we tentatively concluded in the *Notice* that a federal rule imposing a minimum typing speed for CAs was not appropriate.<sup>145</sup> We based this tentative conclusion on the concern that a federal standard could constrain the labor pool for CAs. We invited comments on whether TRS providers are experiencing any labor shortages or difficulties in hiring and retaining competent CAs, and the extent to and manner in which TRS providers currently screen and test potential CAs for typing competency.<sup>146</sup> Finally, we agreed with comments to the *NOI* made by many parties that new technologies, such as enhanced TTY protocols and enhanced computer software, could greatly increase TRS transmission times and, consequently, CA typing speeds would increase as well. We sought comment on the extent to which TRS users and TRS providers have adopted such technologies.<sup>147</sup>

73. Discussion. We are convinced by the comments that a federal rule requiring a minimum typing speed is necessary. It is not possible for a call with a low typing speed to be functionally equivalent to a voice call. We agree with California's Deaf and Disabled

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<sup>142</sup> Dr. Segalman Comments at 9.

<sup>143</sup> NAD/CAN Comments at 19.

<sup>144</sup> 47 C.F.R. § 64.604(a)(1).

<sup>145</sup> *See Notice*, 13 FCC Rcd at 14210.

<sup>146</sup> *Id.*

<sup>147</sup> *Id.*

Telecommunications Program that slow operator typing is frustrating to users, which causes hang-ups leading to higher costs for ratepayers because of the added length of the call and the increase in multiple calls.<sup>148</sup> We are persuaded by consumers' overwhelming support for a minimum standard,<sup>149</sup> as well as the fact that no commenter provided evidence that there is, or would be, a shortage of qualified CAs. In addition, as commenters note, there are technological solutions that are now available that can increase the speed of the transmission.<sup>150</sup>

74. We amend our rules to require that CAs transmit words at a minimum speed equivalent to typing 60 words per minute (wpm). This speed need not be met only by typing, but letters, numbers and characters must be entered for transmission at 60 wpm regardless of the technology used. To satisfy this rule, TRS providers can employ CAs who type 60 wpm, or they can employ technology such as speech recognition or auto-correct software to otherwise transmit words at a speed equivalent to 60 wpm. Commenters suggest typing speeds ranging from 60 to 100 wpm.<sup>151</sup> We find that 60 wpm is appropriate given that the vast majority of the relay calls initiated by TTY users, including users of TTY software on personal computers, are transmitted in baudot, which transmits at a top speed of 45.5 baud, or about 60 words per minute. We will require that the typing speed be tested on an oral-to-type test of a CA's typing speed, rather than a text-to-type test. We agree with commenters that this will accurately reflect the skill necessary for relay service.<sup>152</sup> This new rule will reduce the total length of calls and the number of hang-ups, leading to more functionally equivalent service.

#### **k. Clear and Articulate Voice Communication**

75. Background. In the *Notice*, we tentatively concluded that clear and articulate voice communication is an essential skill for any CA and is essential to the concept of functional

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<sup>148</sup> DDTP's Report to the CPUC at 10.

<sup>149</sup> See NAD/CAN Comments at 17 (set at highest speed currently required by any of the 50 certified relay programs); NVRC Comments at 3 (suggesting 65 wpm); ULS Comments at 7 (suggesting 100 wpm); COR Reply at 13 (require highest typing speed required by states); DSDHH Reply Comments at 10 (at least 60 wpm); Mr. Nelson Reply at 4 (suggesting 65 wpm).

<sup>150</sup> Al Sonnenstrahl Comments at 4; SHHH Comments at 8; TDI Comments at 14; Ultratec Comments at 20.

<sup>151</sup> See NAD/CAN Comments at 17 (set at highest speed currently required by any of the 50 certified relay programs); NVRC Comments at 3 (suggesting 65 wpm); ULS Comments at 7 (suggesting 100 wpm); COR Reply at 13 (require highest typing speed required by states); DSDHH Reply at 10 (at least 60 wpm); Mr. Nelson Reply at 4 (suggesting 65 wpm).

<sup>152</sup> See NAD/CAN Comments at 15-19; TDI Comments at 14; COR Reply at 13.

equivalency. We sought comment on whether to amend our rules to address the need for clear and articulate voice communication by CAs and, in particular, how to evaluate the clarity and articulation of a CA's voice communications.<sup>153</sup>

76. Discussion. Clear and articulate voice communication is an essential skill for any CA, and is essential to the concept of "functional equivalency." We fully expect CAs to provide clear articulation and ease of understanding. We do not, however, adopt measurable standards for clear and articulate voice communication at this time. We find that the record provides evidence that it would be difficult to establish standards in this area because of the subjective nature of such a standard.<sup>154</sup> For example, the presence of an accent or a certain manner of speaking, which to one listener renders the speaker inarticulate, may not render the speaker inarticulate to another listener. We also decline, as suggested by ASHA, to require the CA to be able to relay the message without repetition at least 80% of the time.<sup>155</sup> The equipment, not the CA, could be the cause of a garbled message because of line noise or other network interference. We will revisit this issue if we find that clear articulation and ease of understanding are not being provided.

### I. Treatment of TRS Customer Information

77. Background. TRS is generally offered through relay providers operating under an exclusive contract with a state or other authority to provide statewide TRS for a specified period of time, *e.g.*, three to five years. To deliver efficient relay service, relay providers generally develop databases of information on frequent relay customer's preferences, such as the TRS user's interexchange carrier of choice and whether the customer uses the voice or hearing carry-over features<sup>156</sup> This information, often referred to as "caller profiles," is used by the TRS provider to deliver more efficient and individualized service to TRS users.<sup>157</sup>

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<sup>153</sup> See Notice, 13 FCC Rcd at 14210.

<sup>154</sup> See Ameritech Comments at 9; Sprint Comments at 13. *But see* the Federation Comments at 4 (rules should address clear and articulate voice communication); ULS Comments at 7 (TRS providers should ensure, prior to hiring and subsequently through monitoring, that CAs clearly articulate their speech so that it is easily understandable by the general population).

<sup>155</sup> See ASHA Comments at 5.

<sup>156</sup> "Voice carryover" is a modified form of TRS in which a person with a hearing disability is able to speak directly to the other end user, and the CA types back the response of the other end user. 47 C.F.R. § 64.601(9). "Hearing carryover" is a modified form of TRS where a person with a speech disability is able to listen to the other end user, and, in reply, the CA speaks the text as typed by the person with the speech disability. *Id.* § 64.601(6). TRS providers are required by the Commission's rules to offer VCO and HCO. *Id.* § 64.604(b)(5).

<sup>157</sup> Other data typically included in the customer profile includes a customer's blocking preferences, speed dial

78. States have experienced difficulty ensuring a smooth transition between providers during a change in TRS vendor when the outgoing vendor refuses to transfer the caller profiles to the new vendor. Outgoing TRS providers have asserted that the information is either customer proprietary network information (CPNI), the sharing of which is restricted under section 222 of the Communications Act, or is proprietary. They object to providing the database to the incoming TRS provider.<sup>158</sup> If a new vendor cannot receive the caller profile information from the old vendor, however, customers experience significant disruption of service. Callers must rebuild the profile with the new vendor, and risk billing and other problems. In addition, the new vendor must spend time and resources to obtain the customer profile information from the TRS users. We acknowledged in the *Notice* that section 225 requires the Commission to ensure that TRS “is available, to the extent possible and *in the most efficient manner*, to persons with hearing or speech disabilities in the United States.”<sup>159</sup> We asked parties to comment on the use of caller profiles, including whether outgoing vendors should transfer the profile to a new TRS vendor to provide TRS in the “most efficient manner” as required by the statute. We also asked whether the restrictions on the use of CPNI found in section 222 of the Communications Act apply to these profiles.<sup>160</sup>

79. Discussion. We find that section 222’s CPNI requirements do not apply to these customer profiles. Section 222 applies to telecommunications carriers.<sup>161</sup> Whether TRS providers are telecommunications carriers under the Act depends on whether TRS is considered a telecommunications service. The Act defines a telecommunications carrier as “... any provider of telecommunications services.... A telecommunications carrier shall be treated as a common carrier under this Act only to the extent that it is engaged in telecommunications services....”<sup>162</sup> An entity is engaged in telecommunications services if it offers “telecommunications” for a fee directly to the public.<sup>163</sup> Telecommunications is defined as “... the transmission, between or among

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numbers, long distance carrier of choice, and specific instructions to follow on every call. Ex Parte Comments of the Wisconsin Department of Administration, filed November 16, 1999, at 1-2.

<sup>158</sup> Sprint Comments at 13.

<sup>159</sup> 47 U.S.C. § 225(b)(1) (emphasis added).

<sup>160</sup> *Notice*, 13 FCC Rcd at 14215.

<sup>161</sup> 47 U.S.C. § 222(a) (“Every telecommunications carrier has a duty....”).

<sup>162</sup> 47 U.S.C. § 153(44).

<sup>163</sup> 47 U.S.C. § 153(46).

points specified by the user, of information of the user's choosing, *without change in the form or content of the information as sent and received* (emphasis added).<sup>164</sup>

80. TRS provides individuals with hearing or speech disabilities the ability to engage in communications using the telecommunications network. The Act defines telecommunications relay services as:

... telephone transmission services that *provide the ability* for an individual who has a hearing impairment or speech impairment to *engage in communication* by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing impairment or speech impairment to communicate using voice communications services by wire or radio.<sup>165</sup>

81. Although TRS provides a form of telephone transmission service, its purpose is to provide individuals with hearing or speech disabilities the ability to communicate by wire or radio with hearing individuals through a change in the form of the information or message, most commonly from text to voice, thus facilitating a desired communication. Indeed, it is the sender's need for assistance in so changing the form of the information to be communicated that underlies the purpose of the relay service. For this very reason, TRS cannot be considered "telecommunications" under the definition in section 3(43), because that section excludes transmissions that "change the form or content of the information as sent or received." Because TRS providers do not provide telecommunications services, they are not telecommunications carriers, and section 222 does not apply.

82. We conclude that transferring this data is essential to fulfilling our statutory mandate to ensure that TRS is available "in the most efficient manner." The transfer of TRS user profile information between TRS providers does not violate TRS user privacy expectations, because the user has agreed to give the data to the TRS provider. In addition, the reason for giving this data to the TRS provider remains even if there is a change in TRS providers. Both the transferor and transferee fall under the same confidentiality requirements and thus no privacy concerns are raised. We require, therefore, that all future state contracts shall provide for a transfer of this information. When entering new contracts, states must include language that requires that TRS customer profile data be transferred from an outgoing TRS vendor to the incoming TRS

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<sup>164</sup> 47 U.S.C. § 153(43).

<sup>165</sup> 47 U.S.C. § 225(a)(3).

vendor.<sup>166</sup> Such data must be transferred in usable form at least 60 days prior to the provider's last day of service, in order to ensure minimum disruptions to customers' calls.<sup>167</sup>

83. We find that the data may not be used for any purpose other than the provision of TRS. While we find that the profile information should be transferred during a change in vendor, we agree with commenters that argue that the confidentiality of customer profile information is of paramount importance to TRS users.<sup>168</sup> We agree that unfettered access to TRS user information would violate the reasonable privacy expectations of the TRS user. To safeguard against abuse, we adopt NAD/CAN and TDI's suggestion and require that TRS customer profile information shall not be used for any purpose other than to connect the TRS user, for whom the profile exists, with the called parties desired by that TRS user.<sup>169</sup> We require that TRS customer profile information shall not be sold, distributed, shared, or revealed in any way by the relay center or its employees, unless compelled to do so by lawful order or in compliance with our requirement regarding a change in vendor.

84. We will not adopt the recommendation of KRSI and Mr. Stoltz to require TRS providers to obtain signed approvals from customers to allow the outgoing TRS provider to transfer the customer profile information to the incoming TRS provider.<sup>170</sup> Such a requirement is not generally supported by TRS users and would unnecessarily disrupt customers each time the vendor is changed. Our approach maintains privacy by requiring that both the old and new vendors are similarly restricted and cannot use the information for any purpose other than as an aid in the provision of TRS.

#### 4. Capability of Handling Any Type of Call

85. Our current rules require TRS to be capable "of handling any type of call normally provided by common carriers and the burden of proving the infeasibility of handling any type of call will be placed on the carriers."<sup>171</sup> Our rules also require that "TRS users shall

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<sup>166</sup> The requirements in our TRS rules also apply to any carrier within a state that does not have a TRS program that has been certified by the Commission under 47 U.S.C. § 225(f) ("Certification"). *See* 47 U.S.C. § 225(c).

<sup>167</sup> Ex Parte Comments of the Wisconsin Department of Administration, filed November 16, 1999, at 3.

<sup>168</sup> AIM Comments at 2; COR Reply at 15; KRSI Comments at 13; NAD/CAN Comments at 22; Mr. Stoltz Comments at 5-6; TDI Comments at 18-19.

<sup>169</sup> *See* NAD/CAN Comments at 22; TDI Comments at 18-19.

<sup>170</sup> KRSI Comments at 13; Mr. Stoltz Comments at 6.

<sup>171</sup> 47 C.F.R. § 64.604(a)(3).

pay rates no greater than the rates paid for functionally equivalent voice communication services ....<sup>172</sup> In spite of these provisions, TRS users continue to have trouble placing relay calls when using wireless service, using their long distance carrier of choice when making relay calls, and receiving the benefits of special pricing plans for both wireless and wireline phone calls when using relay service. Some of these problems appear to be due to carriers' failure to enter into the necessary billing and other arrangements with TRS providers.<sup>173</sup> Carriers are obligated under our rules to take the action necessary for TRS providers to handle any type of call under equal pricing plans or to demonstrate the infeasibility of handling certain calls. TRS users must be able to place all wireless and wireline calls that have not otherwise been proven infeasible, and may not be charged rates that are any greater than rates paid for functionally equivalent voice communication services for those calls. We need not create a new rule to address this situation because our rules already establish this obligation.<sup>174</sup> We remind carriers that the Commission may consider enforcement action, including forfeitures, should this obligation not be met.<sup>175</sup>

## 5. Treatment of Enhanced Services

86. Background. Throughout this rulemaking, many commenters have requested requiring relay service to accommodate subscription features and services, such as Caller ID, as well as features and services that TRS users typically may encounter, such as interactive menu systems.<sup>176</sup> In the *Notice*, we tentatively concluded that our jurisdiction under section 225 does not permit us to mandate access to such services. We asked for comment on how to approach two specific services raised by commenters: interactive menu systems and pay-per-call services.<sup>177</sup>

87. We also tentatively concluded that, although we do not have jurisdiction to require access to such services, we do have authority to establish rules to govern the way in

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<sup>172</sup> 47 C.F.R. § 64.604(c)(3).

<sup>173</sup> See Letter from Felecia L. Greer, Executive Secretary, Maryland Public Service Commission dated Sept. 22, 1999 (directing Qwest Communications Corp. to provide access to its services through the TRS within sixty days).

<sup>174</sup> 47 C.F.R. § 64.604(a)(3).

<sup>175</sup> Common Carrier Bureau Reminds All Common Carriers of their Obligation to Provide Access to Their Telecommunications Services via Telecommunications Relay Services, *Public Notice*, DA 99-1871, rel. Sept. 14, 1999.

<sup>176</sup> See, e.g., NAD/CAN Comments at 26-27; NCOD Comments at 1; DSDHH Reply Comments at 8.

<sup>177</sup> *Notice*, 13 FCC Rcd at 14205.

which CAs handle recorded messages that require user interaction or input.<sup>178</sup> The current rules require CAs to relay all conversation verbatim unless the relay user specifically requests summarization.<sup>179</sup> We proposed to amend our rules to allow CAs, when encountering an interactive or recorded message during a TRS call, to use a “hot key” to alert the TRS user to the presence of a recorded message.<sup>180</sup> We stated that the CA should be permitted to inquire as to whether the TRS user wishes the CA to summarize the message or to listen for specific information. We sought comment on this proposed rule.<sup>181</sup>

88. Discussion. Upon further analysis, we conclude that section 225 does not prohibit us from requiring relay services to accommodate enhanced or information services. We find that section 225 does not limit relay service to telecommunications services, but rather, to the contrary, expressly reaches enhanced or information services. In fact, section 225 specifically defines TRS as a service that “provides the ability for an individual who has a hearing impairment or speech impairment to engage in communication by wire or radio ... in a manner that is functionally equivalent to the ability of an individual who does not have [such an]... impairment to communicate using voice communication services by wire or radio.” Communication by wire and radio encompasses both telecommunications and information or enhanced services. Both “communication by wire” and “communication by radio” are broad terms defined in section 3 of the Communications Act.<sup>182</sup> They are not limited to telecommunications services, but include “the transmission ...of writing, signs, signals, pictures and sounds of all kinds...including all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission.”<sup>183</sup> This latter definition sweeps broadly and extends to information services, as defined in section 3(2) of the Act.

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<sup>178</sup> See 47 U.S.C. § 225 (a)(3), (b)(1), (d)(1).

<sup>179</sup> 47 C.F.R. § 64.604(a)(2).

<sup>180</sup> A “hot key” is part of some relay software programs that allows the CA to program certain phrases (*i.e.*, “ringing” or “number busy”) into a sequence in order to transmit these phrases to the user without typing the entire phrase. Thus, a CA can type an entire phrase or message in one or two keystrokes on the TTY rather than by typing every word of each letter of an entire phrase or message. The TTY user can then respond with a request that the CA summarize – or not summarize – the message being relayed.

<sup>181</sup> Notice, 13 FCC Rcd at 14205-6.

<sup>182</sup> 47 U.S.C. § 153.

<sup>183</sup> *Id.* at § 153(33), 153 (51).

89. Moreover, we find that an interpretation of TRS that fails to follow the literal meaning of the statute would be contrary to its stated purpose. As explained below, a more limited reading that excludes information services would restrict us from ensuring that TRS is provided in a manner functionally equivalent to that provided users of voice telecommunications services, as the definition requires. Thus, a narrow interpretation would curtail delivery of relay services, rather than facilitate them, as Congress has expressly directed us to do in section 225(b)(1)(requiring us to ensure that “relay services are available, to the extent possible and in the most efficient manner...”). Thus, we find that by reading the statute consistent with its literal meaning, we further the express statutory purpose.

90. Notwithstanding our initial cautionary note in the *Notice* where we questioned the plain meaning of this definitional provision because of language in a House Report, upon further review we conclude that in fact the legislative history supports our reading of the statute. As commenters have explained, an exchange on the House floor after the House Report was issued persuasively demonstrates the intent of the drafters to reach audiotext services at a later date when “future technology can make these services available utilizing a relay service.”<sup>184</sup> This colloquy was intended to clarify that the inclusion of limiting language in the House Report was only intended to preclude relay of audiotext services to the extent not then technologically possible. We therefore disagree with the few parties who claimed, without substantiation, that the statute should be interpreted more narrowly.<sup>185</sup>

91. Not only is the definition of TRS broad, but as noted, section 225 requires the Commission to ensure that interstate and intrastate relay services are available “to the extent possible.”<sup>186</sup> This provision requires us to evaluate the state of technology available to provide relay services, and determine what is possible. As technology improves, relay service and its standard offerings should also improve. In sum, given the clear statutory language defining TRS, the purpose of the provision, and its legislative history, we reject our earlier tentative position. Below we will address several improvements consumers have requested.

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<sup>184</sup> See NAD/CAN Comments at 12 (citing 136 Cong. Rec. H2434 (May 17, 1990)); NVRC Comments at 2; the Federation Comments at 3. The colloquy in the Congressional Record from almost a decade ago is:

Mr. Hoyer: Mr. Chairman, I am concerned about a provision contained in the report filed by the Committee on Energy and Commerce which states: "It is not the function of this legislation to facilitate access to audiotext services." Is it the gentleman's understanding that this bill precludes such access?

Mr. Thomas A. Luken: The gentleman raises a good question. While the legislation does not require access to audiotext services at this time, if future technology can make these services available utilizing a relay service, it is our intent to ensure such access. 136 Cong. Rec. H2434 (May 17, 1990).

<sup>185</sup> Ameritech Comments at 6-7; KRSI Comments at 7; SBC Comments at 8; Sprint Comments at 11.

<sup>186</sup> 47 U.S.C. § 225(b)(1).

92. Interactive Menus and Voice Mail. We are convinced by the record that today relay service does not provide consumers with a hearing or speech disability the ability to engage in communication by wire or radio in a manner that is functionally equivalent to those consumers without such a disability when the communication encounters an interactive menu.<sup>187</sup> We are concerned, as are many TRS users, that individuals with disabilities are being excluded from access to these ubiquitous technologies.<sup>188</sup> In order to provide TRS that is functionally equivalent to telecommunications service provided to voice users, we must interpret our duty under section 225 to include the authority to require access through TRS to interactive menus. Interactive menu systems and recorded messages are increasingly used by businesses and services. They present substantial barriers to TRS users because the speed at which information is provided is too fast to allow the TRS user to respond within the system response time. As a result, TRS users are either unable to make calls that encounter interactive menus or other recorded messages or must frequently place a succession of calls to leave a message with, or access the information provided by, such systems.<sup>189</sup>

93. The technologies to make these calls functionally equivalent are still being developed, and are required under Section 255 of the Act.<sup>190</sup> Section 255 requires telecommunication providers and manufacturers to make their services and products accessible to people with disabilities, if readily achievable. Until we determine that such technology is fully deployed, we require that certain features be available to all relay users for the handling of these calls.

94. First, we will adopt our proposal, supported by commenters, to require CAs to alert the user to the presence of a recorded message through a "hot key" on the CA's terminal.<sup>191</sup>

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<sup>187</sup> See, e.g., MATP Comments at 4; Missouri Assistive Technology Council and Project Comments at 5; NAD/CAN Comments at 4; NCOD Comments at 1; President's Committee on Employment of People with Disabilities Comments at 9; SHHH Comments at 6; DSDHH Reply Comments at 8.

<sup>188</sup> See ATAP Comments at 3; MATP Comments at 4 - 5 ("Quite simply, if accessible products are not required and the TRS does not provide access, individuals with disabilities either have no access to the service or have access to a different service [such as a live person or message call-back via TTY] that is not equitable.")

<sup>189</sup> Notice, 13 FCC Rcd at 14205.

<sup>190</sup> 47 U.S.C. § 255.

<sup>191</sup> See AIM Comments at 2; Bell Atlantic Comments at 6; FPSC Comments at 7; KRSI Comments at 7; MCI Comments at 5; Mr. Stoltz Comments at 3; the President's Committee Comments at 9-10; TDI Comments at 11; Texas PUC Comments at 10- 11; Mr. Gregory Reply at 7; SBC Reply at 4.

The hot key would send text from the CA to the consumer's TTY indicating that a recording or interactive menu has been encountered. The consumer can respond by typing back instructions on how he or she wishes to proceed. Commenters correctly point out that our current rules permit the consumer to ask the CA to summarize a message.<sup>192</sup> Because some relay facilities may be technically incapable of receiving "interrupt" messages, a caller using a TTY who does not request summarization before the CA begins typing a lengthy recorded message would have no choice but to receive the entire recorded message verbatim. Our amendment gives these TTY users an opportunity to request summarization. We encourage relay providers to consider whether a user's preference to summarize messages should be included in the user's customer profile.

95. Second, we adopt the suggestion of some commenters that we require relay centers to record these recorded messages, which could be retained for the length of the call.<sup>193</sup> This will allow the CA to record the message at the relay center and rewind the message as needed to complete relaying of the message to the TRS user. Because the CA would have a recording of the lengthy message, the CA would be able to finish relaying the message to the TRS user without having to redial the requested telephone number to hear the message time and again as she types it to the TRS user.<sup>194</sup>

96. Finally, oftentimes, consumers are unable to complete calls to interactive menus without repeating those calls. We agree with consumers who argue that the statute prohibits consumers from being charged for repeated calls.<sup>195</sup> The statute and our current rules state that users of telecommunications relay services should pay rates no greater than the rates paid for functionally equivalent voice communication services.<sup>196</sup> Because voice callers can expect to complete their interaction with an interactive menu system in one call, relay users shall not be charged for additional calls needed to complete their interactions with recorded messages or

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<sup>192</sup> See Ms. Andrews Comments at 2 (CA, not caller, should initiate summarizing); FPSC Comments at 5 (CA should summarize all calls upon request); NAD/CAN Comments at 13 (citing 47 C.F.R. § 64.604(a)(2) to substantiate its claim that the Commission's rules already allow for such an exception); NVRC Comments at 2 (Commission should continue the current policy that TRS be verbatim unless requested by the consumer).

<sup>193</sup> See, e.g., MATP Comments at 4; COR Reply at 10 – 11; NAD/CAN Reply at 7; Mr. Nelson Reply at 3; NVRC Comments at 2; TDI Reply at 10; Texas PUC Reply at 11.

<sup>194</sup> See MATP Comments at 4.

<sup>195</sup> See NAD/CAN Comments at 14; MCI Rely at 8. Because a charge is not associated with completing the first leg of a relay call to the TRS center, multiple charges occur only for toll calls.

<sup>196</sup> 47 U.S.C. § 225(c)(1)(D).

interactive menu systems. We anticipate that TRS providers will include these added costs of completing these interactions in their overall costs of providing relay service, for reimbursement from the state and interstate TRS Funds.

97. A few commenters suggested requiring access to a live operator in lieu of a menu or recorded message.<sup>197</sup> Section 225, however, does not give us any express authority over the entities employing menus and recorded messages. As noted above, however, we do expect that these features will become increasingly available as equipment manufacturers and service providers comply with our rules recently issued under section 255 of the Communications Act.

98. Pay-Per-Call Services. Commenters have also asked us to require that pay-per-call services be offered through TRS.<sup>198</sup> The record clearly indicates that it is technically feasible for relay centers to accommodate calls to pay-per-call services.<sup>199</sup> Pay-per-call services are services that are accessible through use of a 900 number.<sup>200</sup> The record shows that some relay providers already offer pay-per-call services,<sup>201</sup> so we require relay service to offer pay-per-call as another component of functional equivalency.

## 6. Access to Emergency Services

99. Background. While Department of Justice regulations require state and local government entities to make emergency services directly accessible to TTY users,<sup>202</sup> some individuals with hearing and speech disabilities continue to contact emergency services via a TRS center. Our current rules provide that emergency calls should be handled in the same manner as any other TRS call.<sup>203</sup> In the *Notice*, we expressed our concern that the current

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<sup>197</sup> See Bell Atlantic Comments at 6; Mr. LaPointe Comments at 1 (suggesting all menus should be programmed to allow a caller to access a live operator or to select a slower voice menu); Mr. Stoltz Comments at 3; SBC Reply at 4.

<sup>198</sup> NCOD at 1.

<sup>199</sup> See Maryland Comments at 8-9; NAD/CAN Comments at 12.

<sup>200</sup> Pay-per-call services cannot be accessed using a toll-free dialing sequence, such as a 1-800 number. A consumer can use a charge card to pay for the calls when they are made. See 47 U.S.C. § 228 (“Regulation of Carrier Offering of Pay-Per-Call Services”); 47 C.F.R. §§ 64.1600 et seq. (“Interstate Pay-Per-Call and Other Information Services”).

<sup>201</sup> See *Notice*, 13 FCC Rcd at 14204.

<sup>202</sup> 28 C.F.R. § 35.162.

<sup>203</sup> 47 C.F.R. § 64.604(a)(3).

handling of emergency calls may jeopardize public safety, and we noted that TRS users should be informed as to how emergency calls will be handled.<sup>204</sup> We asked TRS providers for a description of their current operating procedures for incoming emergency calls, and sought comment on whether TRS centers should be required to pass a caller's Automatic Number Identification (ANI) information to an emergency services operator, and how "emergency calls" should be defined for the purposes of TRS.<sup>205</sup>

100. Discussion. Notwithstanding the requirement that 911 operators are prepared to handle TTY calls directly, we have a separate obligation to make relay calls to 911 functionally equivalent to a direct call to 911. When a caller uses relay to call 911, the objective should be to provide the appropriate 911 operator with the information she needs to process the call as quickly as possible. Based on the record, we find there are two ways that the handling of emergency calls by relay centers can improve. First, calls must be directed as quickly as possible to the correct Public Safety Answering Point, or PSAP.<sup>206</sup> Second, the caller's telephone number, used by the PSAP to determine the location of the caller, must get to the PSAP quickly and in a format the PSAP can use. One relay provider has developed a solution that quickly connects callers to the appropriate PSAP by matching a caller's phone number with the appropriate PSAP electronically and transferring the call to the PSAP with two key strokes.<sup>207</sup> This solution appears to be the best solution currently available,<sup>208</sup> and appears to be possible for all relay providers to institute, as no party argued that it could not be done. Many parties supported this kind of connection for emergency calls.<sup>209</sup> We will require providers to provide this kind of immediate connection to 911. Any other resolution will unnecessarily delay

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<sup>204</sup> See Notice, 13 FCC Rcd at 14203.

<sup>205</sup> *Id.*

<sup>206</sup> A "PSAP," or Public Safety Answering Point, contacts police, fire or ambulance service when it receives calls through its emergency service number.

<sup>207</sup> AT&T Comments at 7-8. AT&T concludes the centers can receive ANI information through the telephone network, but the PBX cannot automatically pass the information to an emergency center because it is not equipped with required network signaling protocol.

<sup>208</sup> Other providers attempt to locate the correct PSAP by manually consulting directories. See APCO and NENA Reply Comments at 3; AT&T Comments at 7; KRSI Comments at 6-7; MCI Comments at 5; SBC Comments at 8; TX-ACSEC Comments at 3; TDI Reply at 8.

<sup>209</sup> See TX-ACSEC Comments at 2-3; Texas PUC Comments at 10; GTE Reply at 2; NAD/CAN Reply at 10; TDI Reply at 8.

the call.<sup>210</sup> When a voice caller dials 911, his phone number is automatically transmitted to the appropriate PSAP.

101. Second, as requested by commenters, we will require that CAs pass along the caller's telephone number to the PSAP orally even when the caller disconnects before being connected to emergency services.<sup>211</sup> With a voice caller, a PSAP will automatically receive the caller's telephone number even if the call is disconnected, and the PSAP will normally return the call if the caller hangs up or if the call is disconnected. We believe our requirement is necessary to ensure functionally equivalent service and will allow the PSAP to follow its normal procedures for a call that disconnects before being handled by an operator.<sup>212</sup> We would prefer to require that callers' telephone numbers automatically be relayed to the 911 operator from the relay operator, as suggested by many commenters,<sup>213</sup> but believe it would be premature to do so as no provider has demonstrated that capability and several have raised questions about its feasibility.<sup>214</sup> We will address some of the technical issues that would make this possible in our *Further Notice*.

102. With respect to a definition of emergency call, parties offered numerous suggestions.<sup>215</sup> We agree, however, with those commenters who argue that no definition of emergency is necessary, and that the TRS operator should simply be instructed to refer calls to emergency services when appropriate.<sup>216</sup> We believe that this approach is reasonable and

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<sup>210</sup> See SBC Reply at 7.

<sup>211</sup> See AIM Comments at 1; APCO and NENA Comments at 2; Bell Atlantic Comments at 5; the Federation Comments at 3; Mr. Gregory Comments at 10-11; MATP Comments at 3; NAD/CAN Comments at 10-11; Mr. Stoltz Comments at 3; TDI Comments at 16-17; TX-ACSEC Comments at 3-4; COR Reply at 9; Mr. Nelson Reply at 3.

<sup>212</sup> Relay service has often been referred to as a provider of "dial tone." By completing the call to the PSAP, the CA is simply providing a dial tone connection equivalent to that which would occur with a voice user.

<sup>213</sup> See APCO and NENA Comments at 2; Sprint Comments at 10; TX-ACSEC Comments at 4; NAD/CAN Reply at 10.

<sup>214</sup> See Sprint Comments at 10.

<sup>215</sup> See AIM Comments at 1 (where one or more persons are faced with death or injury or if there is a risk of serious property damage); APCO and NENA Comments at 3; Federation Comments at 3; NVRC Comments at 2; SBC Reply at 7 (include calls expressly requesting connection to 911 or requesting assistance from "a public agency of the type typically accessed via a 911 system by persons without hearing or speech impairments (e.g., police, fire, and ambulance or emergency squads)").

<sup>216</sup> See Bell Atlantic Comments at 5; KRSI Comments at 6; SBC Comments at 8; NAD/CAN Reply at 11; SBC Reply at 6.

recognizes that at times there may need to be a judgment made about when the caller is in distress and in need of emergency assistance.<sup>217</sup>

## 7. Outreach

103. Our current rule states that carriers, “through publication in their directories, periodic bill inserts, placement of TRS instructions in telephone directories, through directory assistance services, and incorporation of TTY numbers in telephone directories, shall assure that callers in their service areas are aware of the availability and use of TRS.”<sup>218</sup> Despite the Commission's decision in the *Notice* that we would not seek comment on outreach activities, several parties provided lengthy comments on the need for more effective outreach activities and strongly encouraged the Commission to propose rules concerning the effectiveness of information and outreach programs.<sup>219</sup>

104. We are convinced by the comments that this rule has not effectively ensured that callers are aware of TRS, and that the lack of awareness adversely affects the quality of TRS. Several parties contend that TRS users find it difficult to communicate with callers who are unaware of the existence of TRS. Callers using a relay service experience an alarming number of hang-ups by people receiving the TRS call who are not familiar with, and do not understand, the service.<sup>220</sup> Commenters state that many employment opportunities are not extended to individuals with hearing disabilities because employers are uncomfortable using, or are unwilling to use, TRS for normal business transactions.<sup>221</sup>

105. While we have not given public notice sufficient to change the rules in this Order, we will propose further changes for comment. We clarify that the current rule obligates carriers to assure that “callers” in their service areas are aware of TRS.<sup>222</sup> The term “callers” refers to the general public, not just consumers with speech and hearing disabilities. It is crucial for everyone to be aware of the availability of TRS for it to offer the functional equivalence required by the

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<sup>217</sup> See NAD/CAN Comments at 11.

<sup>218</sup> 47 C.F.R. § 225.

<sup>219</sup> Maryland Comments at 12; TDI Comments at 20; NAD/CAN Reply Comments at 12; and NVRC Reply Comments at 3.

<sup>220</sup> NAD/CAN Reply Comments at 12.

<sup>221</sup> NAD/CAN Reply Comments at 12; TDI Reply Comments at 15.

<sup>222</sup> 47 C.F.R. § 64.604(c)(2).

statute. As Congress has stated, TRS was designed to help bridge the gap between people with hearing and speech disabilities and people without such disabilities with respect to telecommunications services. The lack of public awareness prevents TRS from achieving this Congressionally mandated objective. We also note that, as we have determined that TRS includes services other than traditional TTY-based relay service, outreach efforts should now include information about these relay services as well.

## 8. Enforcement and Certification

### a. Substantive Changes to Certified TRS Programs

106. Background. In the *Notice*, we proposed to improve Commission oversight of certified state TRS programs. First, we tentatively concluded that states must notify the Commission of substantive changes in their state TRS program within sixty days of the effective date of the change and file documentation demonstrating that the state TRS program remains in compliance with the Commission's mandatory minimum standards.<sup>223</sup>

107. Discussion. We adopt our tentative conclusion to require that states notify the Commission, in writing, about substantive changes in their TRS programs within 60 days of when they occur, as is supported by most parties.<sup>224</sup> Such notification shall include a summary of the action taken, the reason for the change, and a certification that the state TRS program continues to meet federal minimum standards after implementing the substantive change. Substantive changes include but are not limited to: change in state vendor, change in a state TRS program to allow a multiple vendor environment, and changes in state rules related to any of the federal minimum standards for TRS. We would also consider a major change in technology used by a state program to be a substantive change.<sup>225</sup>

108. The record indicates that most parties support our proposals to strengthen the Commission's oversight and enforcement of standards regarding the state TRS programs, and we

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<sup>223</sup> See *Notice*, 13 FCC Rcd at 14216.

<sup>224</sup> See AIM Comments at 2; KRSI Comments at 14; MATP Comments at 5; NAD/CAN Comments at 23; SHHH Comments at 11; ; Mr. Stoltz Comments at 6; TDI Comments at 19; COR Reply Comments at 13-14; NVRC Reply Comments at 3; TRS Advisory Council Reply Comments at 5. Sprint states that it believes that the proposed rule amendment will help the Commission ensure that interstate and intrastate TRS are available to the extent possible and in the most efficient manner to people in the United States with hearing or speech disabilities. See Sprint Comments at 14-15.

<sup>225</sup> See Mr. Gregory Comments at 19.

disagree with commenters who say that the Commission already has adequate oversight of state TRS programs under its current rules.<sup>226</sup> States make changes to their TRS programs throughout the five year certification period. Providing the Commission notice of substantive changes will help ensure that such changes do not affect the state TRS programs' compliance with Commission rules. This minimal notification requirement will ensure that current information relating to TRS programs is available and will also ensure that state TRS programs continue to provide high quality TRS throughout the five-year certification period. In addition, informing the Commission of changes will help the Commission – and other relay administrators and consumers – be informed of developments in relay services as they occur throughout the nation.<sup>227</sup>

109. We do not believe that this notification requirement will require states to make burdensome filings, or that such filings will affect their "ability and willingness" to make such changes to their TRS programs, or modify their programs to meet specific state needs.<sup>228</sup> First, we require notification only for changes that are "substantial," which suggests that these changes will not occur often. Second, the filing should be brief because state relay administrators need only explain the change they have made and certify continued compliance with the federal minimum standards.

#### **b. Information on Complaint Procedures**

110. Background. In the *Notice*, we tentatively concluded that we should amend our rules to require that, as a condition of certification, a state TRS program must demonstrate that its program makes available to TRS users informational materials on state and Commission complaint procedures sufficient for users to know the proper procedures for filing complaints.<sup>229</sup>

111. Discussion. We will adopt our tentative conclusion, supported by commenters, that state TRS programs must make available to TRS users information on state and Commission complaint procedures.<sup>230</sup> We will adopt a rule to require such efforts as a minimum standard.

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<sup>226</sup> See the Board Comments at 2, 4; FPSC Comments at 11.

<sup>227</sup> Mr. Gregory Comments at 19.

<sup>228</sup> See the Board Comments at 3-4.

<sup>229</sup> See *Notice*, 13 FCC Rcd 14216-7.

<sup>230</sup> See AIM Comments at 2; KRSI Comments at 14; MATP Comments at 5; NAD/CAN Comments at 23; SHHH Comments at 11; Sprint Comments at 14; Mr. Stoltz Comments at 6; COR Reply Comments at 13-14; NVRC Reply Comments at 3.

112. We will also require, as suggested by several parties, that states provide contact information to the Commission, which will be posted on the Commission's web site.<sup>231</sup> We agree that providing an Internet reference would enable customers to easily find the appropriate forum for filing their complaints.<sup>232</sup> We, therefore, require that state TRS administrators, by June 30, 2000, submit the name and address of a contact person or office for filing consumer complaints about intrastate TRS service to the Consumer Information Bureau, Disability Rights Office, 445 12<sup>th</sup> Street SW, Suite 6-A207, Washington, DC, 20554. The state complaint contacts will be on file at our reference center located at Commission headquarters and will be posted on the Internet at the Commission's web site at <http://www.fcc.gov>. Each state's contact information shall include, at a minimum: the name and address of the state office that receives complaints, grievances, inquiries and suggestions, along with the relevant voice and TTY telephone number(s), fax number, e-mail address, and physical address to which correspondence should be sent. It should also include information on the relay provider and how to contact the provider directly.

113. We also require that interstate relay providers submit to the Commission, by June 30, 2000, the name and address of a contact person or office to receive input and inquiries regarding interstate TRS service. The Commission also will post this information on the Internet. We require that similar information be on file for all relay providers having state TRS contracts.

114. We remind relay users that the statute requires that complaints about intrastate service be filed first with the state.<sup>233</sup> Having state contact information and state complaint procedures on file at the Commission and on the Commission's web site will help disseminate information that enables TRS users to direct their complaints or suggestions on how to improve the quality of TRS to the proper forum.

### **c. Complaint Procedures**

115. Background. Section 225(g) directs the Commission to refer complaints about intrastate TRS to those states which have certified TRS programs; states have 180 days to

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<sup>231</sup> the Federation Comments at 5-6; NAD/CAN Comments at 23-24; NVRC Comments at 4; SHHH Comments at 11; COR Reply Comments at 14.

<sup>232</sup> NAD/CAN Comments at 23.

<sup>233</sup> 47 U.S.C. § 225(g).

resolve the complaints, unless a shorter time is prescribed by state law.<sup>234</sup> Other complaints filed with the Commission, either about interstate TRS or about intrastate TRS in states without a certified program, must be resolved by the Commission within 180 days of their filing.<sup>235</sup> In 1991, the Commission promulgated rules prescribing the manner in which complaints will be either referred to a state as required under section 225(g) or, if exclusively within our jurisdiction, resolved by the Commission.<sup>236</sup> In the *Notice*, we requested comment on whether modifications to our complaint rules are needed to better serve the needs of TRS users.<sup>237</sup>

116. Discussion. The record indicates that there is considerable consumer dissatisfaction with the speed and effectiveness of both state and federal complaint processes.<sup>238</sup> With respect to federal complaint processes, we agree with commenters that the existing formal process is simply too unwieldy for most consumers.

117. In other areas where we experience complaints from consumers, we have adopted processes that make it easy for consumers to file complaints and for defendant companies to move expeditiously to resolve them. For example, our rules governing the procedures to be followed when complaints are filed pursuant to section 255 of the Act<sup>239</sup> give consumers the option of filing complaints “informally.”<sup>240</sup> The principal objective of the informal mechanism is to afford consumers and affected companies non-adversarial opportunities to resolve issues or concerns without expending the time, effort and money typically associated with our formal adjudicatory proceedings. We believe that our section 255 rules can serve as a useful model for TRS complaints. Therefore we will incorporate this “consumer friendly” model into our TRS rules. We retain our existing TRS complaint procedures as an option for consumers desiring formal adjudication of a complaint.

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<sup>234</sup> *Id.*

<sup>235</sup> *See* 47 C.F.R. § 64.604(c)(1).

<sup>236</sup> *See* 47 C.F.R. § 64.604(c)(5).

<sup>237</sup> *Notice*, 13 FCC Rcd at 14217.

<sup>238</sup> *See, e.g.*, the Federation Comments at 5-6; NAD/CAN Comments at 23-24; NVRC Comments at 4; SHHH Comments at 11; COR Reply Comments at 14.

<sup>239</sup> 47 U.S.C. § 225.

<sup>240</sup> *See* 47 C.F.R. § 6.16.

118. The new rules will make it easy for consumers to lodge complaints and facilitate cooperative efforts between consumers and TRS providers to resolve them quickly without extensive involvement by the Commission. At the same time, the rules position Commission staff to be pro-active in handling complaints that raise troublesome compliance questions or which otherwise may not be susceptible to informal resolution by the parties.<sup>241</sup> For example, Commission staff will have the authority to require a response to an informal complaint in less than thirty days if warranted under the circumstances of a complaint. In addition, the staff may, in its discretion, require a TRS provider to appear before it, via telephone conference or in person, to bring and give evidence relevant to a complaint. Finally, if the nature or number of complaints against a particular TRS provider evinces an underlying compliance problem, the staff may initiate on its own motion, or recommend to the Commission if appropriate, prompt and decisive enforcement actions.<sup>242</sup>

119. With respect to state complaint processes, Section 225 contemplates that intrastate complaints filed under that section will be resolved by the state within 180 days after the complaint is filed. We believe that, regardless of whether a complaint is filed with the state relay administrator, a state PUC, the relay provider, or with any other state entity, the consumer's complaint should be resolved within 180 days of the date it is filed with a state entity. Where a relay complaint is filed with a provider, administrator, or other entity that is not the state entity designated to handle relay complaints, the entity receiving such complaint shall forward such complaints they receive from consumers to the appropriate state entity. The state entity designated to resolve complaints should develop a means by which, regardless of which state entity receives the complaint, the complaint is resolved within 180 days. This should address consumers' comments that complaints are neither being resolved nor being forwarded to the appropriate state agency,<sup>243</sup> because the designated entity will have an interest in ensuring that the party receiving the complaint resolves it promptly.

#### **d. Improving the Monitoring of Service Quality**

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<sup>241</sup> We note that in administering our rules pertaining to informal complaints against common carriers under section 208 of the Act, Commission staff works cooperatively with consumers and companies to promote meaningful solutions to problems raised by consumers and to address underlying compliance concerns. In addition, the staff routinely meets with consumer groups and company representatives to evaluate the effectiveness of the process and explore improvements that will better serve the needs of consumers and the industry. We expect the staff to use a similar approach in administering our TRS rules.

<sup>242</sup> The Act gives the Commission, and its staff pursuant to delegated authority, broad powers to inquire into or investigate the activities and practices of parties who are subject to the Act's requirements. *See, e.g.*, sections 4 (i) and 403 of the Act, 47 U.S.C. §§ 154(i), 403.

<sup>243</sup> TDI Comments at 19.

120. Background. We asked commenters to discuss whether we should adopt specific guidelines to assess whether a state TRS program provides "adequate procedures and remedies for enforcing the requirements of the state program" as is required by the statute.<sup>244</sup>

121. Discussion. We agree with parties that requiring state applicants for TRS certification and interstate TRS providers to maintain a log of consumer complaints that allege a violation of the federal minimum standards would substantially help the Commission monitor the service quality of the relay programs.<sup>245</sup> We will adopt such a requirement. The logs must include all complaints alleging a breach of TRS rules, whether they were filed with the TRS provider or the State, and must be retained until the next application for certification is granted. The log shall include, at a minimum, the date that the complaint was lodged, the nature of the complaint, the date of resolution and how it was resolved. If state TRS programs and providers are in compliance with federal minimum standards, maintaining the log should not be burdensome.<sup>246</sup> In addition, we will require that summaries of these logs indicating the number of complaints received must be submitted annually to the Consumer Information Bureau, Disability Rights Office, 445 12<sup>th</sup> Street SW, Washington, DC, 20554, and at the time of certification.

122. This information will provide an early warning system to the Commission of possible service quality problems during the five-year certification period. In addition, it will allow the Commission to determine whether the state has appropriately addressed consumer complaints during the certification process.<sup>247</sup> It will also enable the Commission to spot national trends that may lend themselves to coordinated solutions. Finally, the information will be available to enable states to communicate with one another to learn how other states have resolved certain complaints.

## 9. Advisory Committee

123. Background. In the *Notice*, the Commission stated that a number of parties had recommended in their comments to the *NOI* that we consider establishing an advisory committee to monitor TRS quality issues, or expand the role of the Interstate TRS Fund Advisory Council to

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<sup>244</sup> 47 U.S.C. § 225(f)(2)(B).

<sup>245</sup> Mr. Gregory Comments at 19-20; NAD/CAN Comments at 23; TDI Comments at 19.

<sup>246</sup> NAD/CAN Comments at 23.

<sup>247</sup> See Mr. Gregory Comments at 20.

allow that body to consider also TRS quality issues in addition to funding issues.<sup>248</sup> We recognized the importance of efforts to ensure the quality of TRS, but specifically declined to propose creation of an advisory committee.<sup>249</sup>

124. Discussion. We recognize the importance of obtaining feedback from TRS users in order to realize our statutory obligations. We recognize the need for facilitating ongoing dialogue with consumers, state relay administrators, and relay providers. We will be exploring various possibilities for establishing such a dialogue, including the possibility of establishing an advisory committee under the Federal Advisory Committee Act.<sup>250</sup>

## II. FURTHER NOTICE OF PROPOSED RULEMAKING

### A. OVERVIEW

125. As part of our ongoing efforts to evaluate technology and the needs of the disability community, we raise additional issues here for further review. There are emerging and existing technologies that we have not yet fully evaluated for inclusion in relay service.

### B. FURTHER RULES FOR TRS RELAY SERVICE

126. Some commenters have suggested that STS relay service should have its own separate national 800 number that contains as many identical digits as possible.<sup>251</sup> Commenters suggest that this is particularly important for STS relay because many people with speech disabilities have memory problems and, consequently, find it easier to say one number over again than to say different numbers. We ask for comment on whether a separate nationwide access number for STS relay service is desirable. We have set aside 711 for use with TRS, and are now moving towards implementing 711 nationwide.<sup>252</sup> We ask whether nationwide access to

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<sup>248</sup> Notice, 13 FCC Rcd at 14217.

<sup>249</sup> *Id.*

<sup>250</sup> Federal Advisory Committee Act, 5 U.S.C., App. (1988).

<sup>251</sup> *Id.*

<sup>252</sup> The Use of N11 Codes and Abbreviated Dialing Arrangements, CC Docket No. 92-105, *First Report and*

relay services through 711 can meet this need. We also ask parties for any other proposals that would make TRS more functionally equivalent for TRS users. We ask parties who suggest additional rules to provide specific language.

### C. AVAILABILITY OF SS7 TO TRS CENTERS

127. There are several areas where relay provider access to information normally only available to common carriers may significantly improve the quality of relay services. Information such as the presubscribed carrier and the originating number are normally passed along from carrier to carrier with the call through Signaling System 7 (SS7) technology. If relay providers had access to this information, they may be able to provide Caller ID, improved access to 911, and eliminate the need to collect some of information collected manually today through caller profiles. Currently our rules do not allow entities other than common carriers to purchase SS7 service. TRS centers, therefore, do not receive information normally transferred through the out-of-band signaling SS7 provides. Specifically, 47 C.F.R. §64.1600(f) defines SS7 service as “a *carrier to carrier* out-of-band signaling network used for call routing, billing, and management [italics added].”<sup>253</sup> We seek comment on whether 47 C.F.R. §64.1600 should be amended to include TRS providers as lawful recipients and users of SS7 data. We also seek comment on whether the Commission has jurisdiction to allow TRS centers access to SS7 technology.

128. In the accompanying *Report and Order*, we describe the process used by TRS centers to manually collect information about their callers in order to efficiently handle calls. CAs create and maintain personal profiles on TRS users so that CAs can correctly and efficiently handle the call. Some of the information regularly collected overlaps a caller’s subscriber list information which is included in SS7 data.<sup>254</sup> TRS providers’ current practice of building databases manually by interviewing each TRS user does not appear to be the most efficient manner of providing TRS.<sup>255</sup> Accordingly, we seek comment on making available to TRS centers SS7 technology to allow the same information that is transferred from one common carrier to another, to be transferred from common carrier to TRS provider, and from TRS provider to common carrier. In doing so, we seek to obviate the need for TRS centers to

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*Order and Further Notice of Proposed Rulemaking*, 12 FCC Rcd 5572 (1997).

<sup>253</sup> 47 C.F.R. § 1600.

<sup>254</sup> 47 C.F.R. §§ 64.2003(c)(2) and (g) defines subscriber list information, and excludes it from the definition of CPNI.

<sup>255</sup> 47 U.S.C. § 225(b)(1).

manually collect the overlapping information that normally resides in the public switched telephone network. The transmission of SS7 will not obviate the need to collect all caller information specific to making a TRS call, such as a user's preference for voice carryover, but we tentatively conclude that use of SS7 will render provision of relay service more functionally equivalent to service provided to voice users. We ask parties to provide comments on these issues.

129. We tentatively conclude that access to SS7 will resolve problems described by several commenters between relay and Caller ID service.<sup>256</sup> For TRS calls, if the called party is a Caller ID customer, the displayed Caller ID is sometimes a number for the TRS center itself, sometimes the number of the calling party, and sometimes unavailable. The called party may not recognize the incoming telephone number and decline to answer the call. If the called party knew the identity of the calling party, or knew that the call was from a TRS center, he or she may be more likely to answer the call. We seek comment on whether the problem could be addressed by allowing TRS centers to receive SS7 data.

130. Alternatively, we ask whether a signal could be devised that would indicate that an incoming call is either from a TRS user or from the TRS center. Each TRS call actually involves two telephone calls: the call from the TRS user to the TRS center, and the call from the TRS center to the party with whom the TRS user wishes to communicate. The user's telephone number is delivered to the TRS center during the first leg of the call. With existing TRS centers, for the second leg of the call, the trunk from the TRS center to the LEC switch is either a PBX-like trunk or a Feature Group D trunk. If a PBX-like trunk is used, the called party's Caller ID display will generally show the telephone number of the TRS center telephone trunk that carried the call unless the TRS center makes the number unavailable. If Feature Group D trunking is used instead, according to the Interexchange Carrier Compatibility Forum, TRS centers send information to the network that clearly indicates that the call is from a TRS center. Although the telephone number of the TRS center cannot generally be determined from the information, the call may still be identified as being a TRS call. Since the TRS center's phone number is not included, it cannot be delivered to the destination phone's Caller ID box. However, since the network is able to identify the second leg of the call as originating from a relay center, it may be possible to deliver a "dummy" telephone number to the Caller ID box. We tentatively conclude that delivery of either the TRS center's number or a standard TRS number, such as 711, for Caller ID on incoming TRS calls is technically feasible. Deaf or hard of hearing individuals rely on TRS to call people who use voice telephones. Voice telephone users who have Caller ID devices, however, frequently do not answer an incoming TRS call, because they mistake it for a telemarketing call, since the source of either type of call often is not displayed on the Caller ID

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<sup>256</sup> NAD Comments at 26-27; TDI Comments at 21-22.

display screen. Until this issue is finally resolved, we strongly encourage carriers and providers to do all that is possible to implement this solution.

131. If parties disagree with our tentative conclusion, we ask them to propose an alternative solution. We also ask parties to comment on whether moving from Feature Group D to SS7 signaling is necessary or desirable to implement this or an alternative solution. Finally, since the same ANI signaling information is frequently used by both billing systems and Caller ID systems, we ask whether it would be possible to implement this or an alternative solution.

132. In addition, we ask for comment on the impact of the Reveal and Anonymous Call Rejection (ACR) features on TTY-to-TTY calls. The Commission staff is in receipt of information that these features block TTY calls, where the called party has a TTY attached to his or her line and also subscribes to Reveal and ACR. The calling TTY signal is blocked even where the calling party's line does not block Caller ID information. In addition, we ask for comment on whether access to SS7 technology will allow relay providers to transfer emergency calls, with the originating number, to 911 operators. Finally, we ask for comment on what new services and features SS7 could make available to TRS users and TRS centers.

133. If SS7 technology is not the choice of all TRS centers, we ask for comment on the relative advantages and disadvantages of using Feature Group D Automatic Number Identification (ANI) and Private Branch Exchange (PBX) trunk signaling. We request specific comment on what new services and features Feature Group D ANI and PBX trunk signaling could make available to TRS users and TRS centers. We also ask for comment regarding the cost of implementing SS7 by TRS centers, and whether or not Local Exchange Carriers (LECs), Interexchange Carriers (IXCs) and Commercial Mobile Radio Service (CMRS) carriers would incur additional costs if they had to transmit SS7 data to TRS centers. Parties should also comment regarding the cost to TRS centers, LECs, IXCs and CMRS carriers that would be incurred if they were to interface with a TRS center using an alternative to SS7. Finally, we ask for comment on whether additional regulations in this area are necessary to provide functionally equivalent service to TRS users, or whether the goal can be achieved in a less regulatory manner.

#### **D. OUTREACH**

134. We tentatively conclude that TRS service would be improved with a nationwide awareness campaign that would reach the groups suggested by commenters - all potential TRS users,<sup>257</sup> consumers with disabilities,<sup>258</sup> senior citizens who have lost their hearing late in life,<sup>259</sup>

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<sup>257</sup> See Maryland Comments at 13; NAD/CAN Reply Comments at 12; NVRC Reply Comments at 3; TDI Reply Comments at 15.

potential STS users,<sup>260</sup> and the general public. We seek comment on the suggestion made by a number of commenters that the outreach effort be supported by the interstate TRS Fund and that the interstate TRS Fund administrator administer the funding for educational outreach programs.<sup>261</sup> We further propose to amend the mission of the Intersate TRS Fund Advisory Council to include establishing guidelines and a procedure to fund a coordinated national outreach campaign. We base this recommendation on the success of Maryland's apparently effective advertising campaign, which included television advertisements. Maryland asserts that as a result of its campaign, public awareness is at an all-time high, telephone inquiries to the state's Maryland Relay customer service department for information regarding relay have risen dramatically, and call volumes to the relay center have increased.<sup>262</sup> We propose that the campaign address all types of relay services and be based on the experience of the Maryland Department of Management and Budget efforts.<sup>263</sup> We propose that the Advisory Council develop its plan with input from all stakeholders.

135. We believe this proposal will be more cost-effective than individual plans developed by each state, as some commenters suggest.<sup>264</sup> We would not expect this plan to be implemented in isolation from the state relay programs, however. A good plan may well have different emphasis in different states or regions, but we believe it can be efficiently developed and coordinated nationally.

136. Finally, we request comment on whether we should require a state's certification program to include, and budget for, outreach efforts.

## E. TECHNOLOGIES, FEATURES AND SERVICES

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<sup>258</sup> See the President's Committee Comments at 7.

<sup>259</sup> See NAD/CAN Reply Comments at 12.

<sup>260</sup> See COR Reply Comments at 6.

<sup>261</sup> See Maryland Comments at 13; NAD/CAN Reply Comments at 12; TDI Reply Comments at 15.

<sup>262</sup> Maryland Comments at 12-13.

<sup>263</sup> See FCC Public Forum on 711 Access to Telecommunications Relay Services CC Docket No. 92-105 September 8, 1999, Comment by Gil Becker (Education Segment), Comment by Brenda Battat (Education Segment).

<sup>264</sup> See Mr. Behnke Reply Comments at 1; Ms. Curtis Reply Comments at 1; Mr. Kemp Reply Comments at 1; Ms. Moore Reply Comments at 1; and Dr. Pray Reply Comments at 1.

137. The language in section 225(d)(2) requires us to ensure that rules prescribed to implement section 225 encourage, consistent with section 7(a) of the Act, the use of existing technology and do not discourage or impair the development of improved technology.<sup>265</sup> In keeping with the statute, our rules specify that no TRS provision set forth in the Commission's rules is intended to discourage or impair the development of improved technology that fosters the availability of telecommunications to persons with disabilities. In addition, as noted above, the functionally equivalent standard is a continuing goal which requires periodic reassessment. Commenters argue strenuously that the services and features offered by the relay system must keep up with changes and improvements in technologies and service offerings available to nondisabled users.<sup>266</sup>

138. In response to the *Notice*, consumers urged the Commission to require a number of relay features as part of its minimum technical standards, asserting that they are technically feasible and would further efforts to provide functionally equivalent service.<sup>267</sup> We seek comment on these and similar features which would enable consumers with disabilities to communicate through the relay service. We seek comment on equipment configurations, the extent to which these features are available or can be offered immediately through TRS, and any other relevant technical or economic factors, including any limitations that currently exist and how to transcend them. A number of these features and services are already offered in some states. We seek comment on what services states are providing and how they are providing them. These features include two-line VCO,<sup>268</sup> voice to text (VTT),<sup>269</sup> two line HCO, reverse VCO, reverse HCO, VCO to TTY, VCO to VCO, HCO to TTY, and HCO to HCO. We also seek comment on features such as call release,<sup>270</sup> automatic call forwarding,<sup>271</sup> interrupt

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<sup>265</sup> 47 U.S.C. § 225 (d)(2).

<sup>266</sup> See AIM Comments at 2; ATAP Comments at 3; CTIA Comments at 1-2.

<sup>267</sup> We recognized in the *Notice* that, in response to our original *NOI*, commenters requested that the Commission require call release, Caller ID, conference calling through TRS, two line VCO, and automatic call forwarding. *Notice*, 13 FCC Red at 14218.

<sup>268</sup> See NAD/CAN Comments at 24-27; NVRC Comments at 3; TDI Comments at 21-22; NVRC Reply at 1; TDI Reply at 17. Two-line voice carryover (VCO) enables consumers to use one line for voicing and the other for receiving TTY transmissions in conference calls.

<sup>269</sup> See NAD/CAN Comments at 24-27; TDI Comments at 21-22. Voice-to-text (VTT) permits relay calls to take place between VCO users and TTY users.

<sup>270</sup> See NAD/CAN Comments at 24-27; Mr. Nelson Reply Comments at 7; TDI Comments at 21-22; TDI Reply Comments at 17. Call release prevents erroneous disconnections when a TTY caller must go through a switchboard at a hotel or hospital to reach the private room of the recipient of the TTY call.

capability,<sup>272</sup> answering machine retrieval, extended community call blocking, pay per use feature blocks, call waiting, return call and call back, three way calling, speed dialing, distinctive ring, and repeat dialing. We tentatively conclude that these various features and services are capable of being provided to relay users and that they must be provided in order for TRS to remain functionally equivalent. We seek comment on this tentative conclusion and are especially interested in hearing from relay providers. We note that our rules require that TRS be capable of handling any type of call normally provided by common carriers and that the burden of proving the infeasibility of handling any type of call will be placed on the carrier. We hope to receive specific information as to how to make these services and features available to TRS users. Parties that disagree with our tentative conclusion that these services must be made available should explain their position in detail, providing technical and specific explanations as to the infeasibility of providing any of these features. We also seek comment on improved transmission speed,<sup>273</sup> wireless messaging services,<sup>274</sup> use of the World Wide Web for voice communications, internet telephony, and any other technologies or changes to technology that may improve relay services or should be available via TRS.

139. Some parties filed comments urging the Commission to address the issue of enhanced protocol, such as the V.18 protocol standard<sup>275</sup>, suggesting that, with the standard, improved interconnectivity between TTYs and digital wireless devices is technically feasible.<sup>276</sup> Since initial guidelines for TRS were established by the Commission, new transmission protocols for TTY have evolved. Although 45.45 bps Baudot is still the dominant protocol and the one present in all TTYs, Bell 103 ASCII, V-series ASCII protocols, and proprietary protocols are also used in TTY products. Many TRS centers support all of the open protocols, and some support TurboCode by Ultratec, which is a proprietary protocol.

140. In addition, international and domestic standards have been written since the initial guidelines were established. ITU-T V.18 is an interworking procedure between data

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<sup>271</sup> See Mr. Nelson Reply at 7.

<sup>272</sup> See NVRC Comments at 3; NVRC Reply Comments at 1.

<sup>273</sup> See Mr. Gregory Comments at 7.

<sup>274</sup> See Wynd Reply at 1.

<sup>275</sup> According to the International Telecommunications Union, the V.18 protocol standard “is intended for use in text telephone, in interworking units, in text relay service, in emergency centers, and in computers to be used for text telephony in the PSTN.” See CTIA Comments at 5.

<sup>276</sup> CTIA Comments at 2-3; TDI Comments at 4-5; GTE Reply Comments at 5.

communications equipment and the text telephones used throughout the world. It is intended to unify the various protocols under one standard and to provide a bridge between TTYs and digital communications equipment. We also ask parties to describe the extent that V.18 currently exists in the marketplace.

141. A draft standard for domestic FSK modems (Baudot at 45.45 bps) is now undergoing balloting within the Telecommunications Industry Association TR-30 committee.

142. All of these technologies and standards are intended for analog telecommunications environments. Telecommunications is evolving into digital technologies. In preparation for the evolution of telecommunications devices from analog to digital, standards have been written for basic text communication. For example, ITU-T T.140 specifies a plain text chat protocol with an international character set as the basis for TTY-type chat in a digital telecommunications environment. It has to date not been implemented in the nation's telecommunications marketplace.

143. To date, the Commission has left decisions about technology for relay platforms to the discretion of the relay provider, as long as both Baudot and ASCII are supported "at any speed generally in use."<sup>277</sup>

144. In order to assure that TRS is meeting the statutory obligation to use existing technology, we seek comment on V.18 and TTY protocols. Specifically, we ask whether TTY users who have digital telecommunications services and equipment can access TRS through direct digital connections, or must they use analog devices through digital telecommunications services. We seek comment on how industry is prepared to address the transition from analog to digital terminals and services. We also seek comment on how digital services will be supported and what will the implications be for relay services. We also seek comment on whether industry standards, such as T.140, are being considered or used in planning for digital service delivery.

145. We ask for input on the advantages or disadvantages to TRS users of implementing V.18 in a TRS environment. We also seek comment on the effect of V.18 implementation in such required services as VCO.

146. The Commission is also interested in comments as to the advantages and disadvantages of V.18 to TRS providers, and additionally, if there are advantages in using V.18 to other segments of the telecommunications industry, such as the wireless industry, for improving their interface to TRS.

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<sup>277</sup> 47 C.F.R. § 64.604 (b) (1).

## F. PROCEDURAL MATTERS

147. Ex Parte Presentations. This matter shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.<sup>278</sup> Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required.<sup>279</sup>

148. Comment Filing Procedures: General Requirements. Pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission’s rules, 47 C.F.R. §§1.415 and 1.419, interested parties may file comments on or before May 5, 2000, and reply comments on or before July 5, 2000. Comments may be filed using the Commission’s Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24, 121 (1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number, which in this instance is CC Docket No. 98-67. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the body of the message, “get form <your e-mail address>.” A sample form and directions will be sent in reply.

149. Parties who choose to file by paper must file an original and four copies of each filing. All filings must be sent to the Commission’s Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W. Room TW A325, Washington, D.C. 20554.

150. Comment Filing Procedures: Other Requirements. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with section 1.49 and all other

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<sup>278</sup> See Amendment of 47 C.F.R. 1.1200 *et seq.* Concerning Ex Parte Presentation in Commission Proceedings, *Report and Order*, 12 FCC Rcd 7348, 7356-57 (citing 47 C.F.R. §1.1204(b)(1)).

<sup>279</sup> See 47 C.F.R. §1.1206(b)(2), as revised.

applicable sections of the Commission's rules.<sup>280</sup> We also direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to utilize a table of contents, regardless of the length of their submission.

151. Parties who choose to file paper should submit their comments on diskette. These diskettes should be submitted to Arlene Alexander, Consumer Information Bureau, 445 Twelfth Street, S.W., Room 4-B452, Washington, D.C. 20554. Such a submission should be on a 3.5-inch diskette formatted in an IBM compatible format using Word for Windows or compatible Software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the docket number), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette.

152. Regardless of whether parties choose to file electronically or by paper, parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 1231 20th Street, N.W., Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 445 Twelfth Street, S.W. Washington, D.C. 20554.

### III. ORDERING CLAUSES

153. Accordingly, IT IS ORDERED that, pursuant to authority found in sections 1, 4(i) and 4(j), 201-205, 218 and 225 of the Communications Act as amended, 47 U.S.C. Sections 151, 154(i), 154(j), 201-205, 218 and 225, this Report and Order IS ADOPTED, and Part 64 of the Commission's rules ARE AMENDED as set forth in the attached Appendix B.

154. IT IS FURTHER ORDERED that the amendments to sections 64.601 through 64.605 of the Commission's rules as set forth in Appendix B ARE ADOPTED, effective thirty days from the date of publication in the Federal Register. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose new or modified reporting and/or recordkeeping requirements or burdens on the public. Implementation of these new or modified reporting and/or recordkeeping requirements will be subject to approval by the Office of Management and Budget (OMB) as prescribed by the Act, and will go into effect upon announcement in the Federal Register of OMB approval.

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<sup>280</sup> See 47 C.F.R. § 1.49.

155. IT IS FURTHER ORDERED that the Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this *Report and Order and Further Notice of Proposed Rulemaking*, including the Initial and Final Regulatory Flexibility Analyses, to the Chief Counsel for Advocacy of Small Business Administration.

156. IT IS FURTHER ORDERED, pursuant to sections 1, 4(i) and 4(j), 201-205, 218 and 225 of the Communications Act as amended, 47 U.S.C. sections 151, 154(i), 154(j), 201-205, 218 and 225, this NOTICE OF PROPOSED RULEMAKING IS ADOPTED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas  
Secretary

**APPENDIX A: List of Parties****Comments**

1. Access to Independence and Mobility (AIM)
2. Advisory Commission
3. American Speech-Language-Hearing Association (ASHA)
4. Ameritech
5. Andrews, Joan
6. Association of Tech Art Projects (ATAP)
7. AT&T Corp. (AT&T)
8. Bell Atlantic
9. Blackstone, Sarah, Ph.D.
10. California Public Utilities Commission (CAPUC)
11. Cellular Telecommunications Industry Association (CTIA)
12. Coco, David
13. Connors, Tom, Ph.D.
14. Davis, Sally F.
15. Dunbar, Bob
16. Eulenberg, John B., Ph.D.
17. Fairman, LuRetta, M.Div.
18. Fleming, Bruce, BSE
19. Florida Public Service Commission (FPSC)
20. Goldstein, Augusta
21. Gregory, Stephen A.
22. GTE Service Corporation (GTE)
23. Gurdin, Barry J., Ph.D.
24. Heppner, Cheryl A.
25. Idaho Public Utilities Commission (IPUC)
26. Kansas Relay Service, Inc. (KRSI)
27. Ladew, Rebecca
28. LaPointe, Leo A.
29. MacInnes, J. Roderick
30. Maryland Department of Budget and Management (Maryland)
31. Massachusetts Assistive Technology Partnership (MATP)
32. MCI Telecommunications Corporation (MCI)
33. Missouri Assistive Technology Council and Project
34. National Association of the Deaf and the Consumer Action Network (NAD/CAN)
35. National Catholic Office for the Deaf (NCOD)

36. New York State Education Department (NYSED)
37. North Carolina Association of the Deaf, Inc.
38. Northern Virginia Resource Center for Deaf and Hard of Hearing Persons (NVRC)
39. Pennsylvania Public Utility Commission (PA PUC)
40. President's Committee on Employment of People with Disabilities (President's Committee)
41. Puerto Rico Telecommunications Regulatory Board (the Board)
42. Ratcliff, Ann, Ph.D.
43. Segalman, Bob, Ph.D.
44. Self Help for Hard of Hearing People, Inc. (SHHH)
45. Shipley, Donna
46. Sonnenstrahl, Alfred
47. Southwestern Bell Telephone Company, Pacific Bell and Nevada Bell (SBC)
48. Sprint Corporation (Sprint)
49. Stoltz, James H.
50. Telecommunications for the Deaf, Inc. (TDI)
51. Texas Advisory Commission on State Emergency Communications (TX-ACSEC)
52. Texas Public Utility Commission (Texas PUC)
53. Ultratec, Inc.
54. United Cerebral Palsy Associations (UCPA)
55. University Legal Services (ULS)
56. USA Deaf Sports Federation (Federation)

### Reply Comments

1. Aber, Robert M.
2. Ashly, Colleen
3. Association of Public-Safety Communications and the National Emergency Number Association (APCO and NENA)
4. AT&T
5. Behnke, Kirk
6. Buell, Stephanie
7. Ching, Winston
8. Council of Organizational Representatives on National Issues Concerning People Who Are Deaf or Hard of Hearing (COR)
9. Curtis, Cindy
10. Damon Brooks Associates
11. D.C. Association of Deaf Citizens (DCADC)
12. Duboiz, Robert

13. Fairman, LuRetta, M.Div.
14. Fleming, Bruce
15. Goldstein, Augusta
16. Gregory, Stephen A.
17. GTE
18. Gurdin, Barry J., Ph.D.
19. Hoye, Pamela K.
20. Interstate TRS Advisory Council
21. Keller, Katherine
22. Keltz, Lynn
23. Kemp, John D.
24. Kilbanow, David W.
25. Ladew, Rebecca
26. LaPointe, Leo A.
27. Laughlin, Lisa M.
28. Leigh, Tom
29. MCI
30. Miller, Craig E.
31. Miller, Lisa A.
32. Moore, Kate
33. NAD/CAN
34. Nelson, David J.
35. North Carolina Division of Services for the Deaf and the Hard of Hearing
36. NVRC
37. PA PUC
38. Pray, Jackie E., Ph.D.
39. Segalman, Bob, Ph.D.
40. Slay, Robert
41. SBC
42. Sprint
43. TDI
44. Travers, Mitchell D.
45. Treece, Phyllis
46. Treece-Sinclair, Les
47. Treece-Sinclair, Pamela
48. Tri-County GLAD
49. United Cerebral Palsy of Pennsylvania
50. Varnado-Evans, Mary
51. Viera, Judith A.
52. Wisconsin Office for the Deaf and Hard of Hearing (WDHH)

53. Wynd Communications Corporation (Wynd)
54. Young, Sarah

**Ex Parte Comments**

1. Benziger, Thomas
2. LaPointe, Leo
3. Maryland Department of Budget & Management
4. Maryland Public Service Commission
5. Minnesota Relay Services
6. Segalman, Bob, Ph.D.
7. Sonnenstrahl, Alfred
8. Sprint
9. Telecommunications Relay Services Coalition
10. Wisconsin Department of Administration

**APPENDIX B: Final Rules**

Part 64, Subpart F of Title 47 of the Code of Federal Regulations is revised as follows

**PART 64 – MISCELLANEOUS RULES RELATING TO COMMON CARRIERS**

Subpart F – Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities

1. The authority citation for Part 64 is amended to read as follows:

**AUTHORITY: 47 U.S.C. § 154, 47 U.S.C. § 225**

2. Sections 64.601 – 64.605 are revised to read as follows:

**§ 64.601 Definitions.**

As used in this subpart, the following definitions apply:

- (1) *American Sign Language (ASL)*. A visual language based on hand shape, position, movement, and orientation of the hands in relation to each other and the body.
- (2) *ASCII*. An acronym for American Standard Code for Information Interexchange which employs an eight bit code and can operate at any standard transmission baud rate including 300, 1200, 2400, and higher.
- (3) *Baudot*. A seven bit code, only five of which are information bits. Baudot is used by some text telephones to communicate with each other at a 45.5 baud rate.
- (4) *Common carrier or carrier*. Any common carrier engaged in interstate communication by wire or radio as defined in section 3(h) of the Communications Act of 1934, as amended (the Act), and any common carrier engaged in intrastate communication by wire or radio, notwithstanding sections 2(b) and 221(b) of the Act.
- (5) *Communications assistant (CA)*. A person who transliterates or interprets conversation between two end users of TRS. CA supersedes the term "TDD operator."
- (6) *Hearing carry over (HCO)*. A reduced form of TRS where the person with the speech disability is able to listen to the other end user and, in reply, the CA speaks the text as typed by the person with the speech disability. The CA does not type any conversation.
- (7) *Telecommunications relay services (TRS)*. Telephone transmission services that provide the ability for an individual who has a hearing or speech disability to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing or speech disability to communicate using voice

communication services by wire or radio. Such term includes services that enable two-way communication between an individual who uses a text telephone or other nonvoice terminal device and an individual who does not use such a device, speech-to-speech services, video relay interpreting services and non-English relay services. TRS supersedes the terms "dual party relay system," "message relay services," and "TDD Relay."

(8) *Text telephone (TTY)*. A machine that employs graphic communication in the transmission of coded signals through a wire or radio communication system. TTY supersedes the term "TDD" or "telecommunications device for the deaf," and TT.

(9) *Voice carry over (VCO)*. A reduced form of TRS where the person with the hearing disability is able to speak directly to the other end user. The CA types the response back to the person with the hearing disability. The CA does not voice the conversation.

(10) *Speech-to-speech relay service (STS)*. A telecommunications relay service that allows people with speech disabilities to communicate with voice telephone users through the use of specially trained CAs who understand the speech patterns of persons with disabilities and can repeat the words spoken by that person.

(11) *Video relay interpreting service (VRI)*. A telecommunications relay service that allows people with hearing or speech disabilities who use sign language to communicate with voice telephone users through video equipment. The video link allows the CA to view and interpret the party's signed conversation and relay the conversation back and forth with a voice caller.

(12) *Non-English language relay service*. A telecommunications relay service that allows persons with hearing or speech disabilities who use languages other than English to communicate with voice telephone users in a shared language other than English, through a CA who is fluent in that language.

(13) *Qualified interpreter*. An interpreter who is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary.

#### **§ 64.602 Jurisdiction.**

Any violation of this subpart by any common carrier engaged in intrastate communication shall be subject to the same remedies, penalties, and procedures as are applicable to a violation of the Act by a common carrier engaged in interstate communication.

#### **§ 64.603 Provision of Services.**

Each common carrier providing telephone voice transmission services shall provide, not later than July 26, 1993, in compliance with the regulations prescribed herein, throughout the area in which it offers services, telecommunications relay services, individually, through designees, through a competitively selected vendor, or in concert with other carriers. Speech-to-speech relay service and interstate Spanish language relay service shall be provided by March 1, 2001. A common carrier shall be considered to be in compliance with these regulations:

- (a) With respect to intrastate telecommunications relay services in any state that does not have a certified program under § 64.605 and with respect to interstate telecommunications relay services, if such common carrier (or other entity through which the carrier is providing such relay services) is in compliance with § 64.604; or
- (b) With respect to intrastate telecommunications relay services in any state that has a certified program under § 64.605 for such state, if such common carrier (or other entity through which the carrier is providing such relay services) is in compliance with the program certified under § 64.605 for such state.

#### **§ 64.604 Mandatory Minimum Standards.**

(a) *Operational standards.*

(1) *Communications assistant (CA).* TRS providers are responsible for requiring that CAs be sufficiently trained to effectively meet the specialized communications needs of individuals with hearing and speech disabilities; and that CAs have competent skills in typing, grammar, spelling, interpretation of typewritten ASL, and familiarity with hearing and speech disability cultures, languages and etiquette. CAs must possess clear and articulate voice communications. CAs must provide a typing speed of a minimum of 60 words per minute. Technological aids may be used to reach the required typing speed. Providers must give oral-to-type tests of CA speed. TRS providers are responsible for requiring that VRI CAs are qualified interpreters. A “qualified interpreter” is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary.

(2) *Confidentiality and conversation content.* (i) Except as authorized by section 705 of the Communications Act, 47 U.S.C. § 605, CAs are prohibited from disclosing the content of any relayed conversation regardless of content, and with a limited exception for STS CAs, from keeping records of the content of any conversation beyond the duration of a call, even if to do so would be inconsistent with state or local law. STS CAs may retain information from a particular call in order to facilitate the completion of consecutive calls, at the request of the user. The caller may request the STS CA to retain such information, or the CA may ask the caller if he wants the CA to repeat the same information during subsequent calls. The CA may retain the information only for as long as it takes to complete the subsequent calls. (ii) CAs are prohibited from intentionally altering a relayed conversation and, to the extent that it is not inconsistent with federal, state or local law regarding use of telephone company facilities for illegal purposes, must relay all conversation verbatim unless the relay user specifically requests summarization, or if the user requests interpretation of an ASL call. An STS CA may facilitate the call of an STS user with a speech disability so long as the CA does not interfere with the independence of the user, the user maintains control of the conversation, and the user does not object. Appropriate measures must be taken by relay providers to ensure that confidentiality of VRI users is maintained.

(3) *Types of calls.* Consistent with the obligations of common carrier operators, CAs are prohibited from refusing single or sequential calls or limiting the length of calls utilizing relay services. TRS shall be capable of handling any type of call normally provided by common carriers and the burden of proving the infeasibility of handling any type of call will be placed on the carriers. Providers of TRS are permitted to decline to complete a call because credit authorization is denied.

(4) *Handling of emergency calls.* Providers must use a system for incoming emergency calls that, at a minimum, automatically and immediately provides the nearest Public Safety Answering Point (PSAP) with the caller's telephone number. In addition, a CA must pass along the caller's telephone number to the PSAP when a caller disconnects before being connected to emergency services.

(5) *In-call replacement of CAs.* CAs answering and placing a TTY-based TRS or VRI call must stay with the call for a minimum of ten minutes. CAs answering and placing an STS call must stay with the call for a minimum of fifteen minutes.

(6) *CA gender preferences.* TRS providers must make best efforts to accommodate a TRS user's requested CA gender when a call is initiated and, if a transfer occurs, at the time the call is transferred to another CA.

(7) *STS called numbers.* Relay providers must offer STS users the option to maintain at the relay center a list of names and telephone numbers which the STS user calls. When the STS user requests one of these names, the CA must repeat the name and state the telephone number to the STS user. This information must be transferred to any new STS provider.

(b) *Technical standards.*

(1) *ASCII and Baudot.* TRS shall be capable of communicating with ASCII and Baudot format, at any speed generally in use.

(2) *Speed of answer.* TRS shall include adequate staffing to provide callers with efficient access under projected calling volumes, so that the probability of a busy response due to CA unavailability shall be functionally equivalent to what a voice caller would experience in attempting to reach a party through the voice telephone network. TRS shall, except during network failure, answer 85% of all calls within 10 seconds by any method which results in the caller's call immediately being placed, not put in a queue or on hold. The ten seconds begins at the time the call is delivered to the TRS center's network. The call is considered delivered when the relay center's equipment accepts the call from the local exchange carrier and the public switched network actually delivers the call to the TRS center. Abandoned calls shall be included in the speed-of-answer calculation. A provider's compliance with this rule shall be measured on a daily basis. The system shall be designed to a P.01 standard. A LEC shall provide the call attempt rates and the rates of calls blocked between the LEC and the relay center to relay administrators and relay centers upon request.

(3) *Equal access to interexchange carriers.* TRS users shall have access to their chosen interexchange carrier through the TRS, and to all other operator services, to the same extent that such access is provided to voice users.

(4) *TRS facilities.* TRS shall operate every day, 24 hours a day. TRS shall have redundancy features functionally equivalent to the equipment in normal central offices, including uninterruptible power for emergency use. TRS shall transmit conversations between TTY and voice callers in real time. Adequate network facilities shall be used in conjunction with TRS so that under projected calling volume the probability of a busy response due to loop trunk congestion shall be functionally equivalent to what a voice caller would experience in attempting to reach a party through the voice telephone network. Relay services that are not mandated by this Commission are not required to be provided every day, 24 hours a day.

(5) *Technology.* No regulation set forth in this subpart is intended to discourage or impair the development of improved technology that fosters the availability of telecommunications to person with disabilities. VCO and HCO technology are required to be standard features of TRS.

(6) *Voice mail and interactive menus.* CAs must alert the TRS user to the presence of a recorded message and interactive menu through a hot key on the CA's terminal. The hot key will send text from the CA to the consumer's TTY indicating that a recording or interactive menu has been encountered. Relay providers shall electronically capture recorded messages and retain them for the length of the call. Relay providers may not impose any charges for additional calls which must be made by the relay user in order to complete calls involving recorded or interactive messages. Relay services shall be capable of handling pay-per-call calls.

(c) *Functional standards.*

(1) *Consumer complaint logs.* (i) States must maintain a log of consumer complaints including all complaints about TRS in the state, whether filed with the TRS provider or the State, and must retain the log until the next application for certification is granted. The log shall include, at a minimum, the date the complaint was filed, the nature of the complaint, the date of resolution, and an explanation of the resolution. (ii) Summaries of logs must be submitted annually to the Commission and at the time of certification.

(2) *Contact persons.* (i) States must submit to the Commission a contact person or office for TRS consumer information and complaints about intrastate TRS. This submission must include, at a minimum, the name and address of the state office that receives complaints, grievances, inquiries and suggestions, voice and TTY telephone numbers, fax number, e-mail address, and physical address to which correspondence should be sent. (ii) Providers of interstate TRS must submit to the Commission a contact person or office for TRS consumer information and complaints about the provider's service. This submission must include, at a minimum, the name and address of the office that receives complaints, grievances, inquiries and suggestions, voice

and TTY telephone numbers, fax number, e-mail address, and physical address to which correspondence should be sent.

(3) *Public access to information.* Carriers, through publication in their directories, periodic billing inserts, placement of TRS instructions in telephone directories, through directory assistance services, and incorporation of TTY numbers in telephone directories, shall assure that callers in their service areas are aware of the availability and use of all forms of TRS. Efforts to educate the public about TRS should extend to all segments of the public, including individuals who are hard of hearing, speech disabled, and senior citizens as well as members of the general population.

(4) *Rates.* TRS users shall pay rates no greater than the rates paid for functionally equivalent voice communication services with respect to such factors as the duration of the call, the time of day, and the distance from the point of origination to the point of termination.

(5) *Jurisdictional separation of costs.*

(i) *General.* Where appropriate, costs of providing TRS shall be separated in accordance with the jurisdictional separation procedures and standards set forth in the Commission's regulations adopted pursuant to § 410 of the Communications Act of 1934, as amended.

(ii) *Cost recovery.* Costs caused by interstate TRS shall be recovered from all subscribers for every interstate service, utilizing a shared-funding cost recovery mechanism. Except as noted below with respect to VRI, costs caused by intrastate TRS shall be recovered from the intrastate jurisdiction. In a state that has a certified program under § 64.605, the state agency providing TRS shall, through the state's regulatory agency, permit a common carrier to recover costs incurred in providing TRS by a method consistent with the requirements of this section. Costs caused by the provision of interstate and intrastate VRI shall be recovered from all subscribers for every interstate service, utilizing a shared-funding cost recovery mechanism.

(iii) *Telecommunications Relay Services Fund.* Effective July 26, 1993, an Interstate Cost Recovery Plan, hereinafter referred to as the TRS Fund, shall be administered by an entity selected by the Commission (administrator). The initial administrator, for an interim period, will be the National Exchange Carrier Association, Inc.

(A) *Contributions.* Every carrier providing interstate telecommunications services shall contribute to the TRS Fund on the basis of interstate end-user telecommunications revenues as described herein. Contributions shall be made by all carriers who provide interstate services, including, but not limited to, cellular telephone and paging, mobile radio, operator services, personal communications service (PCS), access (including subscriber line charges), alternative access and special access, packet-switched, WATS, 800, 900, message telephone service (MTS), private line, telex, telegraph, video, satellite, intraLATA, international and resale services.

(B) *Contribution computations.* Contributors' contribution to the TRS fund shall be the product of their subject revenues for the prior calendar year and a contribution factor determined

annually by the Commission. The contribution factor shall be based on the ratio between expected TRS Fund expenses to interstate end-user telecommunications revenues. In the event that contributions exceed TRS payments and administrative costs, the contribution factor for the following year will be adjusted by an appropriate amount, taking into consideration projected cost and usage changes. In the event that contributions are inadequate, the fund administrator may request authority from the Commission to borrow funds commercially, with such debt secured by future years' contributions. Each subject carrier must contribute at least \$25 per year. Carriers whose annual contributions total less than \$1,200 must pay the entire contribution at the beginning of the contribution period. Service providers whose contributions total \$1,200 or more may divide their contributions into equal monthly payments. Carriers shall complete and submit, and contributions shall be based on, a "Telecommunications Reporting Worksheet" (as published by the Commission in the Federal Register). The worksheet shall be certified to by an officer of the contributor, and subject to verification by the Commission or the administrator at the discretion of the Commission. Contributors' statements in the worksheet shall be subject to the provisions of § 220 of the Communications Act of 1934, as amended. The fund administrator may bill contributors a separate assessment for reasonable administrative expenses and interest resulting from improper filing or overdue contributions. The Chief of the Common Carrier Bureau may waive, reduce, modify or eliminate contributor reporting requirements that prove unnecessary and require additional reporting requirements that the Bureau deems necessary to the sound and efficient administration of the TRS Fund.

(C) *Data collection from TRS Providers.* TRS providers shall provide the administrator with true and adequate data necessary to determine TRS fund revenue requirements and payments. TRS providers shall provide the administrator with the following: total TRS minutes of use, total interstate TRS minutes of use, total TRS operating expenses and total TRS investment in general accordance with Part 32 of the Communications Act, and other historical or projected information reasonably requested by the administrator for purposes of computing payments and revenue requirements. The administrator and the Commission shall have the authority to examine, verify and audit data received from TRS providers as necessary to assure the accuracy and integrity of fund payments.

(D) The TRS Fund will be subject to a yearly audit performed by an independent certified accounting firm or the Commission, or both.

(E) *Payments to TRS Providers.* TRS Fund payments shall be distributed to TRS providers based on formulas approved or modified by the Commission. The administrator shall file schedules of payment formulas with the Commission. Such formulas shall be designed to compensate TRS providers for reasonable costs of providing interstate TRS, and shall be subject to Commission approval. Such formulas shall be based on total monthly interstate TRS minutes of use. TRS minutes of use for purposes of interstate cost recovery under the TRS Fund are defined as the minutes of use for completed interstate TRS calls placed through the TRS center beginning after call set-up and concluding after the last message call unit. In addition to the data required under paragraph (c)(5)(iii)(C) of this section, all TRS providers, including providers who are not

interexchange carriers, local exchange carriers, or certified state relay providers, must submit reports of interstate TRS minutes of use to the administrator in order to receive payments. The administrator shall establish procedures to verify payment claims, and may suspend or delay payments to a TRS provider if the TRS provider fails to provide adequate verification of payment upon reasonable request, or if directed by the Commission to do so. The TRS Fund administrator shall make payments only to eligible TRS providers operating pursuant to the mandatory minimum standards as required in § 64.604, and after disbursements to the administrator for reasonable expenses incurred by it in connection with TRS Fund administration. TRS providers receiving payments shall file a form prescribed by the administrator. The administrator shall fashion a form that is consistent with Parts 32 and 36 procedures reasonably tailored to meet the needs of TRS providers. The Commission shall have authority to audit providers and have access to all data, including carrier specific data, collected by the fund administrator. The fund administrator shall have authority to audit TRS providers reporting data to the administrator. The formulas should appropriately compensate interstate providers for the provision of VRI, whether intrastate or interstate.

(F) TRS providers eligible for receiving payments from the TRS Fund are:

(1) TRS facilities operated under contract with and/or by certified state TRS programs pursuant to § 64.605; or

(2) TRS facilities owned by or operated under contract with a common carrier providing interstate services operated pursuant to § 64.604; or

(3) Interstate common carriers offering TRS pursuant to § 64.604.

(G) Any eligible TRS provider as defined in paragraph (c)(5)(iii) (F) of this section shall notify the administrator of its intent to participate in the TRS Fund thirty (30) days prior to submitting reports of TRS interstate minutes of use in order to receive payment settlements for interstate TRS, and failure to file may exclude the TRS provider from eligibility for the year.

(H) *Administrator reporting, monitoring, and filing requirements.* The administrator shall perform all filing and reporting functions required under paragraphs (c)(5)(iii) (A) through (J) of this section. TRS payment formulas and revenue requirements shall be filed with the Commission on May 1 of each year, to be effective for a one-year period beginning the following July 1. The administrator shall report annually to the Commission an itemization of monthly administrative costs which shall consist of all expenses, receipts, and payments associated with the administration of TRS Fund. The administrator is required to keep the TRS Fund separate from all other funds administered by the administrator, shall file a cost allocation manual (CAM), and shall provide the Commission full access to all data collected pursuant to the administration of the TRS Fund. The administrator shall establish a non-paid, voluntary advisory committee of persons from the hearing and speech disability community, TRS users (voice and text telephone), interstate service providers, state representatives, and TRS providers, which will meet at reasonable intervals (at least semi-annually) in order to monitor TRS cost recovery matters. Each group shall select its own representative to the committee. The administrator's annual report shall include a discussion of advisory committee deliberations.

(I) *Information filed with the administrator.* The administrator shall keep all data obtained from contributors and TRS providers confidential and shall not disclose such data in company-specific form unless directed to do so by the Commission. Subject to any restrictions imposed by the Chief of the Common Carrier Bureau, the TRS Fund administrator may share data obtained from carriers with the administrators of the universal support mechanisms (*See* 47 C.F.R. § 54.701), the North American Numbering Plan administration cost recovery (*See* 47 C.F.R. § 52.16), and the long-term local number portability cost recovery (*See* 47 C.F.R. § 52.32). The TRS Fund administrator shall keep confidential all data obtained from other administrators. The administrator shall not use such data except for purposes of administering the TRS Fund, calculating the regulatory fees of interstate common carriers, and aggregating such fee payments for submission to the Commission. The Commission shall have access to all data reported to the administrator, and authority to audit TRS providers. Contributors may make requests for Commission nondisclosure of company-specific revenue information under § 0.459 of this Chapter by so indicating on the Telecommunications Reporting Worksheet at the time that the subject data are submitted. The Commission shall make all decisions regarding nondisclosure of company-specific information.

(J) The administrator's performance and this plan shall be reviewed by the Commission after two years.

(K) All parties providing services or contributions or receiving payments under this section are subject to the enforcement provisions specified in the Communications Act, the Americans with Disabilities Act, and the Commission's rules.

(6) *Complaints.*

(i) *Referral of complaint.* If a complaint to the Commission alleges a violation of this subpart with respect to intrastate TRS within a state and certification of the program of such state under § 64.605 is in effect, the Commission shall refer such complaint to such state expeditiously.

(ii) Intrastate complaints shall be resolved by the state within 180 days after the complaint is first filed with a state entity, regardless of whether it is filed with the state relay administrator, a state PUC, the relay provider, or with any other state entity.

(iii) *Jurisdiction of Commission.* After referring a complaint to a state entity under paragraph (c)(6)(i) of this section, or if a complaint is filed directly with a state entity, the Commission shall exercise jurisdiction over such complaint only if:

(A) Final action under such state program has not been taken within:

(1) 180 days after the complaint is filed with such state entity; or

(2) A shorter period as prescribed by the regulations of such state; or

(B) The Commission determines that such state program is no longer qualified for certification under § 64.605.

(iv) The Commission shall resolve within 180 days after the complaint is filed with the Commission any interstate TRS complaint alleging a violation of section 225 of the Act or any complaint involving intrastate relay services in states without a certified program. The

Commission shall resolve intrastate complaints over which it exercises jurisdiction under paragraph (c)(6)(ii) of this section within 180 days.

(v) *Complaint Procedures.* Complaints against TRS providers for alleged violations of this subpart may be either informal or formal.

(A) *Informal Complaints.*

(1) Form. An informal complaint may be transmitted to the Consumer Information Bureau by any reasonable means, such as letter, facsimile transmission, telephone (voice/TRS/TTY), Internet e-mail, or some other method that would best accommodate a complainant's hearing or speech disability.

(2) Content. An informal complaint shall include the name and address of the complainant; the name and address of the TRS provider against whom the complaint is made; a statement of facts supporting the complainant's allegation that the TRS provided it has violated or is violating § 225 of the Act and/or requirements under the Commission's rules; the specific relief or satisfaction sought by the complainant; and the complainant's preferred format or method of response to the complaint by the Commission and the defendant TRS provider (such as letter, facsimile transmission, telephone (voice/TRS/TTY), Internet e-mail, or some other method that would best accommodate the complainant's hearing or speech disability).

(3) Service; designation of agents. The Commission shall promptly forward any complaint meeting the requirements of this subsection to the TRS provider named in the complaint. Such TRS provider shall be called upon to satisfy or answer the complaint within the time specified by the Commission. Every TRS provider shall file with the Commission a statement designating an agent or agents whose principal responsibility will be to receive all complaints, inquiries, orders, decisions, and notices and other pronouncements forwarded by the Commission. Such designation shall include a name or department designation, business address, telephone number (voice and TTY), facsimile number and, if available, internet e-mail address.

(B) *Review and disposition of informal complaints.*

(1) Where it appears from the TRS provider's answer, or from other communications with the parties, that an informal complaint has been satisfied, the Commission may, in its discretion, consider the matter closed without response to the complainant or defendant. In all other cases, the Commission shall inform the parties of its review and disposition of a complaint filed under this subpart. Where practicable, this information shall be transmitted to the complainant and defendant in the manner requested by the complainant (*e.g.*, letter, facsimile transmission, telephone (voice/TRS/TTY) or Internet e-mail).

(2) A complainant unsatisfied with the defendant's response to the informal complaint and the staff's decision to terminate action on the informal complaint may file a formal complaint with the Commission pursuant to subsection (v)(C) below.

(C) *Formal Complaints.* A formal complaint shall be in writing, addressed to the Federal Communications Commission, Enforcement Bureau, Telecommunications Consumer Division, Washington, D.C. 20554 and shall contain:

(1) The name and address of the complainant,

- (2) The name and address of the defendant against whom the complaint is made,  
(3) A complete statement of the facts, including supporting data, where available, showing that such defendant did or omitted to do anything in contravention of this subpart, and  
(4) The relief sought.

(D) *Amended complaints.* An amended complaint setting forth transactions, occurrences or events which have happened since the filing of the original complaint and which relate to the original cause of action may be filed with the Commission.

(E) *Number of copies.* An original and two copies of all pleadings shall be filed.

(F) *Service.*

(1) Except where a complaint is referred to a state pursuant to §64.604(c)(6)(i), or where a complaint is filed directly with a state entity, the Commission will serve on the named party a copy of any complaint or amended complaint filed with it, together with a notice of the filing of the complaint. Such notice shall call upon the defendant to satisfy or answer the complaint in writing within the time specified in said notice of complaint.

(2) All subsequent pleadings and briefs shall be served by the filing party on all other parties to the proceeding in accordance with the requirements of § 1.47 of this chapter. Proof of such service shall also be made in accordance with the requirements of said section.

(G) *Answers to complaints and amended complaints.* Any party upon whom a copy of a complaint or amended complaint is served under this subpart shall serve an answer within the time specified by the Commission in its notice of complaint. The answer shall advise the parties and the Commission fully and completely of the nature of the defense and shall respond specifically to all material allegations of the complaint. In cases involving allegations of harm, the answer shall indicate what action has been taken or is proposed to be taken to stop the occurrence of such harm. Collateral or immaterial issues shall be avoided in answers and every effort should be made to narrow the issues. Matters alleged as affirmative defenses shall be separately stated and numbered. Any defendant failing to file and serve an answer within the time and in the manner prescribed may be deemed in default.

(H) *Replies to answers or amended answers.* Within 10 days after service of an answer or an amended answer, a complainant may file and serve a reply which shall be responsive to matters contained in such answer or amended answer and shall not contain new matter. Failure to reply will not be deemed an admission of any allegation contained in such answer or amended answer.

(I) *Defective pleadings.* Any pleading filed in a complaint proceeding that is not in substantial conformity with the requirements of the applicable rules in this subpart may be dismissed.

(7) *Treatment of TRS customer information.* All future contracts between the TRS administrator and the TRS vendor shall provide for the transfer of TRS customer profile data from the outgoing TRS vendor to the incoming TRS vendor. Such data must be disclosed in usable form at least 60 days prior to the provider's last day of service provision. Such data may not be used for any purpose other than to connect the TRS user with the called parties desired by that TRS

user. Such information shall not be sold, distributed, shared or revealed in any other way by the relay center or its employees, unless compelled to do so by lawful order.

#### **§ 64.605 State Certification.**

(a) *State documentation.* Any state, through its office of the governor or other delegated executive office empowered to provide TRS, desiring to establish a state program under this section shall submit, not later than October 1, 1992, documentation to the Commission addressed to the Federal Communications Commission, Chief, Common Carrier Bureau, TRS Certification Program, Washington, DC 20554, and captioned "TRS State Certification Application." All documentation shall be submitted in narrative form, shall clearly describe the state program for implementing intrastate TRS, and the procedures and remedies for enforcing any requirements imposed by the state program. The Commission shall give public notice of states filing for certification including notification in the Federal Register.

(b) *Requirements for certification.* After review of state documentation, the Commission shall certify, by letter, or order, the state program if the Commission determines that the state certification documentation:

(1) Establishes that the state program meets or exceeds all operational, technical, and functional minimum standards contained in § 64.604;

(2) Establishes that the state program makes available adequate procedures and remedies for enforcing the requirements of the state program, including that it makes available to TRS users informational materials on state and Commission complaint procedures sufficient for users to know the proper procedures for filing complaints; and

(3) Where a state program exceeds the mandatory minimum standards contained in § 64.604, the state establishes that its program in no way conflicts with federal law.

(c) *Certification period.* State certification shall remain in effect for five years. One year prior to expiration of certification, a state may apply for renewal of its certification by filing documentation as prescribed by paragraphs (a) and (b) of this section.

(d) *Method of funding.* Except as provided in § 64.604, the Commission shall not refuse to certify a state program based solely on the method such state will implement for funding intrastate TRS, but funding mechanisms, if labeled, shall be labeled in a manner that promote national understanding of TRS and do not offend the public.

(e) *Suspension or revocation of certification.* The Commission may suspend or revoke such certification if, after notice and opportunity for hearing, the Commission determines that such certification is no longer warranted. In a state whose program has been suspended or revoked, the Commission shall take such steps as may be necessary, consistent with this subpart, to ensure continuity of TRS. The Commission may, on its own motion, require a certified state program to submit documentation demonstrating ongoing compliance with the Commission's minimum standards if, for example, the Commission receives evidence that a state program may not be in compliance with the minimum standards.

(f) *Notification of substantive change.* States must notify the Commission of substantive changes in their TRS programs within 60 days of when they occur, and must certify that the state TRS program continues to meet federal minimum standards after implementing the substantive change.

**APPENDIX C: Final Regulatory Flexibility and Paperwork Reduction Analyses****A. Final Regulatory Flexibility Analysis**

157. As required by the Regulatory Flexibility Act (RFA),<sup>281</sup> an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice* in this docket.<sup>282</sup> The Commission sought written public comment on the proposals in the *Notice*, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.<sup>283</sup>

158. This rulemaking proceeding was initiated in order to improve the level and quality of service provided through TRS for the benefit of the community of TRS users. The Commission's goal was to improve the overall effectiveness of the TRS program, and to improve the Commission's oversight of certified state TRS programs and its ability to compel compliance with the federal mandatory minimum standards for TRS.

**B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA**

159. None.

**C. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply**

160. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.<sup>284</sup> The Regulatory Flexibility Act defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small business concern" under section 3

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<sup>281</sup> See 5 U.S.C. § 603. The RFA, *See* U.S.C. § 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

<sup>282</sup> *Notice*, 13 FCC Rcd at 14218.

<sup>283</sup> 5 U.S.C. § 604.

<sup>284</sup> 5 U.S.C. § 603(b)(3).

of the Small Business Act.<sup>285</sup> A small business concern is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).<sup>286</sup>

161. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its Telecommunications Industry Revenue report, regarding the Telecommunications Relay Service (TRS).<sup>287</sup>

162. TRS Providers. Neither the Commission nor the SBA has developed a definition of small entity specifically applicable to providers of telecommunications relay services (TRS). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.<sup>288</sup> The SBA defines such establishments to be small businesses when they have no more than 1,500 employees.<sup>289</sup> According to our most recent data,<sup>290</sup> there are 11 interstate TRS providers, which consist of interexchange carriers, local exchange carriers, state-managed entities, and non-profit organizations. We do not have data specifying the number of these providers that are either dominant in their field of operations, are not independently owned and operated, or have more than 1,500 employees, and we are thus unable at this time to estimate with greater precision the number of TRS providers that would qualify as small business concerns under the SBA's definition. We note, however, that these providers include large interexchange carriers and incumbent local exchange carriers. Consequently, we estimate that there are fewer than 11 small TRS providers that may be affected by the proposed rules, if adopted.

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<sup>285</sup> 5 U.S.C. § 601(3).

<sup>286</sup> Small Business Act, 15 U.S.C. § 632 (1996).

<sup>287</sup> Telecommunications Industry Revenue, Figure 2.

<sup>288</sup> Small Business Act, 15 U.S.C. § 632 (1996).

<sup>289</sup> 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) Code 4813.

<sup>290</sup> This is recent data from the National Exchange Carrier Association, which administers the Interstate TRS Fund.

#### D. Description of Projected Reporting, Recordkeeping, and other Compliance Requirements

163. Reporting and Recordkeeping: This Report and Order involves several reporting requirements. First, it requires that certified states notify the Commission of substantive changes in their state TRS program within 60 days of the effective date of the change.<sup>291</sup> Second, states are required to file documentation demonstrating that the state TRS program remains in compliance with the Commission's mandatory minimum standards following the substantive change.<sup>292</sup> Third, the Report and Order requires TRS administrators to submit the name and address of a contact person or office for filing consumer complaints about intrastate TRS service to the Commission by June 30, 2000.<sup>293</sup> Finally, on an annual basis, beginning May 1, 2001, and upon the Commission's request, states are required to file a copy of their TRS complaint logs.<sup>294</sup>

164. Other Compliance Requirements: The rules adopted in this Report and Order require that all common carriers providing voice transmission services must ensure that STS services are available to callers with speech disabilities throughout their service areas within one year of the publication in the Federal Register of this *Report and Order*.<sup>295</sup> These rules will affect certified states. The rules also require that TRS calls be answered more promptly,<sup>296</sup> that a minimum typing speed be implemented,<sup>297</sup> and that communications assistants stay with a TTY TRS call for a minimum of ten minutes.<sup>298</sup> These rules will affect TRS providers.

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<sup>291</sup> See *supra* section I(C)(8)(a).

<sup>292</sup> See *supra* section I(C)(8)(a).

<sup>293</sup> See *supra* section I(C)(8)(b).

<sup>294</sup> See *supra* section I(C)(8)(d).

<sup>295</sup> See *supra* section I(C)(1)(b).

<sup>296</sup> See *supra* section I(C)(3)(h).

<sup>297</sup> See *supra* section I(C)(3)(j).

<sup>298</sup> See *supra* section I(C)(3)(i).

### **E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

165. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

166. The proposals in the *Notice*, and the comments the Commission sought regarding them, are part of the Commission's analysis of its role with respect to the implementation and operation of nationwide TRS for persons with hearing and speech disabilities. The guiding principal shaping our final conclusions is Congress' direction that TRS keeps pace with advancing technology and that the Commission's rules do not discourage the implementation of technological advances or improvements. Large interexchange carriers and incumbent local exchange carriers provide the majority of TRS service, and we believe that the number of small entities impacted by our conclusions would be potentially very small. With respect to the amendments to the Commission's rules governing TRS, by statute, common carriers providing voice transmission services who are subject to the TRS rules, including small entities, may comply with their obligations individually, through designees, through a competitively selected vendor, or in concert with other carriers.<sup>299</sup> For these reasons, we conclude that the rule amendments will have a minimal impact on small entities.

167. Report to Congress: The Commission will send a copy of this *Report and Order*, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, *see* 5 U.S.C. § 801 (a)(1)(A). In addition, the Commission will send a copy of this *Report and Order*, including FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Report and Order*, and FRFA (or summaries thereof) will also be published in the Federal Register. *See* 5 U.S.C. § 604(b).

### **B. Final Paperwork Reduction Act**

168. As required by the Paperwork Reduction of 1995, the *Notice* invited the general public and the Office of Management and Budget (OMB) to comment on the proposed

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<sup>299</sup> 47 U.S.C. § 225 (c).

information collection requirements contained in the *Notice*.<sup>300</sup> The changes to our information collection requirements on which we sought comment in the *Notice* included the requirement that, except during network failure, TRS shall answer 85% of all calls by a CA prepared to place the TRS call, within 10 seconds of the time the incoming call reaches the TRS provider's network, and no more than 30 seconds shall elapse between receipt of dialing information and the dialing of the requested number. This calculation is required to be performed daily.

169. OMB's comment on this requirement urges us to explore the use of alternative means, including statistical sampling or periodic performance monitoring, to ensure that the ten second answering portion of the requirement is met, rather than require TRS operators to calculate response times as set forth in 47 C.F.R. section 64.604(b)(2). Because of the nature of the requirement that the calculation measures, we feel that statistical sampling or periodic performance monitoring will be inappropriate and inadequate. This requirement has been misinterpreted and misapplied by some TRS providers and our modification seeks to decrease the likelihood that the misinterpretation continues. We note that the speed-of-answer requirement is an existing rule and that, in this *Report and Order*, we simply modify that rule to further minimize delays in placing TRS calls. The new rule now forecloses the possibility that the TRS call will be placed in a distribution queue, by requiring that a TRS call be handled immediately, whether by CA or an automated process.

170. In addition, OMB states that we must demonstrate that calculating the speed-of-answer on a daily basis has some practical utility to justify the burden it imposes. As set forth in this *Report and Order*, our main goal is to make the TRS calling experience functionally equivalent to the experience of voice callers. By modifying our speed-of-answer requirement to result in the TRS call being placed more quickly, we feel we meet that goal. As the *Report and Order* explains, reaching a CA ready to place the relay call is equivalent to getting a dial tone when picking up the phone. Thus, this portion of the call is the first crucial step to making the TRS calling experience functionally equivalent to placing a voice call and should be demonstrated daily.

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<sup>300</sup> See *Notice*, 13 FCC Rcd at 14223.

## APPENDIX D: Initial Regulatory Flexibility Analysis

### I. Initial Regulatory Flexibility Analysis

171. As required by the Regulatory Flexibility Act (RFA),<sup>301</sup> the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules in this *Further Notice*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Further Notice*. The Commission will send a copy of the *Further Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. See 5 U.S.C. § 603(a). In addition, the *Further Notice* and IRFA (or summaries thereof) will be published in the Federal Register.

#### A. Need for, and Objectives of, the Proposed Rules

172. The Commission is issuing this *Further Notice* to seek public comment on technological advances that could improve the level and quality of service provided through TRS for the benefit of the community of TRS users. In doing so, the Commission hopes to enhance the quality of TRS, and broaden the potential universe of TRS users consistent with Congress' direction at 47 U.S.C. § 225 (d)(2) to the Commission to ensure that its regulations encourage the use of existing technology and not discourage or impair the development of improved technology. Specifically, the *Notice* proposes to require minimum mandatory standards specific to nationwide speech-to-speech (STS) service for persons with severe speech disabilities. The *Further Notice* also seeks comment on outreach programs, the accessibility of emergency services to TRS, and whether SS7 services should be made available to TRS centers. The intent of these proposed rules is to improve the overall effectiveness of the TRS program, and to improve the Commission's oversight of certified state TRS programs and its ability to compel compliance with the federal mandatory minimum standards for TRS.

#### B. Legal Basis

173. The authority for actions proposed in this *Further Notice* may be found in sections 1, 4(I) and (j), 201-205, 218 and 225 of the Communications Act of 1934, as amended, 47 U.S.C. sections 151, 154(i), 154(j), 201-205, 218 and 225.

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<sup>301</sup> 5 U.S.C. § 603. The RFA, 5 U.S.C. § 601 et seq., has been amended by The Contract with America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

### C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

174. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.<sup>302</sup>

The Regulatory Flexibility Act defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small business concern” under section 3 of the Small Business Act.<sup>303</sup> A small business concern is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).<sup>304</sup>

175. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its Telecommunications Industry Revenue report, regarding the Telecommunications Relay Service (TRS).<sup>305</sup>

176. TRS Providers. Neither the Commission nor the SBA has developed a definition of small entity specifically applicable to providers of telecommunications relay services (TRS). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.<sup>306</sup> The SBA defines such establishments to be small businesses when they have no more than 1,500 employees.<sup>307</sup> According to our most recent data,<sup>308</sup> there are 11 interstate TRS providers, which consist of interexchange carriers, local exchange carriers, state-managed entities, and non-profit organizations. We do not have data specifying the number of these providers that are either dominant in their field of operations, are not independently owned and operated, or have more than 1,500 employees, and we are thus unable at this time to estimate with greater precision the

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<sup>302</sup> 5 U.S.C. § 603(b)(3).

<sup>303</sup> 5 U.S.C. § 601(3).

<sup>304</sup> 5 U.S.C. § 632.

<sup>305</sup> Telecommunications Industry Revenue, Figure 2.

<sup>306</sup> Small Business Act, 5 U.S.C. § 632 (1996).

<sup>307</sup> 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) Code 4813.

<sup>308</sup> This is recent data from the National Exchange Carrier Association, which administers the interstate TRS Fund.

number of TRS providers that would qualify as small business concerns under the SBA's definition. We note, however, that these providers include large interexchange carriers and incumbent local exchange carriers. Consequently, we estimate that there are fewer than 11 small TRS providers that may be affected by the proposed rules, if adopted. We seek comment generally on our analysis identifying TRS providers, and specifically on whether we should conclude, for Regulatory Flexibility Act purposes, that any TRS providers are small entities.

**D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements**

177. This *Further Notice* imposes no requirement to file any information with the Federal Communications Commission.

**E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

178. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

179. The proposals in the *Further Notice*, and the comments the Commission seeks regarding them, are part of the Commission's analysis of its role with respect to the implementation and operation of nationwide TRS for persons with hearing and speech disabilities. The guiding principal shaping these proposals is Congress' direction to the Commission to ensure that TRS keeps pace with advancing technology and that the Commission's rules do not discourage the implementation of technological advances or improvements. The majority of TRS service is provided by large interexchange carriers and incumbent local exchange carriers, and we believe that the number of small entities impacted by these proposals would be potentially very small. With respect to proposed amendments to the Commission's rules governing TRS, by statute, common carriers providing voice transmission services who are subject to the TRS rules, including small entities, may comply with their obligations individually, through designees, through competitively selected vendor, or in concert with other carriers.<sup>309</sup> For this reason, the Commission expects that the proposed rule

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<sup>309</sup> 47 U.S.C. § 225(c).

amendments will have minimal impact on small entities. We tentatively conclude that our proposals in the *Further Notice* would impose minimum burdens on small entities. We seek comment on our tentative conclusion.

**F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules**

180. None.

## Separate Statement of Commissioner Susan Ness

*Re: Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities. CC Docket No. 98-67.*

We are in the midst of a telecommunications revolution that is reshaping our economy and society. In this day and age, access to telecommunications services becomes even more essential. Today's order is an important step to help ensure access to quality telecommunications services not only for the millions of Americans with hearing and speech disabilities, but also for people without disabilities who communicate with these citizens.

I write separately to voice my strong support for creation of a disabilities advisory committee that would include TRS users, TRS providers, carriers, manufacturers, state and local governments, and other interested parties. The Commission benefits greatly from the expertise of committees established to advise us on such specialized issues as numbering, public safety, technological innovations, and issues of concern to state and local governments.

I believe the Commission would also gain tremendously from the input of a committee of experts that could advise us on technological advances and the impact of such technologies on services for those with disabilities. Moreover, an advisory committee could serve as a clearinghouse for relay concerns and could provide an ongoing dialogue to resolve issues before regulatory action becomes necessary.

Congress recognized the importance of an advisory committee over a decade ago when it enacted requirements for telecommunications relay services as part of the Americans with Disabilities Act. The Senate Committee Report states:

Given the unique and specialized needs of the population that will be utilizing telecommunications relay services, the FCC should pay particular attention to input from representatives of the hearing and speech impaired community. It is recommended that this input be obtained in a formal manner such as through an advisory committee that would represent not only telecommunications relay service consumers but also carriers and other interested parties.<sup>310</sup>

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<sup>310</sup> S. Rep. No. 116, 101<sup>st</sup> Cong., 1<sup>st</sup> Sess. (1989).

I urge the Commission to move forward as expeditiously as possible to establish a disabilities advisory committee.

## Separate Statement of Commissioner Gloria Tristani

*Re: Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities. CC Docket No. 98-67.*

I applaud today's decision, which is another significant step towards ensuring that all Americans have meaningful access to telecommunications services. Without quality Telecommunications Relay Service (TRS), the millions of Americans with hearing and speech disabilities would be left on the sidelines, unable to access the telecommunications services and equipment that are so central to the ability to communicate and to participate in today's information-driven society.

The Commission has benefited from seven years of experience since TRS became available on a uniform, nationwide basis. By amending the rules governing the delivery of TRS, we expand the kinds of relay services available to consumers to keep pace with rapid technological change in the telecommunications industry. And to keep pace with the rapid demographic change in this country, we recognize that non-English language relay services are "telecommunications relay services" as defined by the Act, which can be reimbursed from relay funds. Joining the 18 states that make intrastate and interstate Spanish relay services available to date, we require interstate common carriers to provide interstate Spanish relay service within one year.

Other amendments adopted today will improve the quality of TRS services, ensuring that those with hearing and speech disabilities are able to communicate by wire in a manner "functionally equivalent" to those without such disabilities, as required by the law. I am confident that these rule changes will substantially improve the quality of life for all Americans with hearing and speech disabilities. But we must remain vigilant. As the issues raised in the Notice reflect, steady technological and societal changes compel us to reexamine regularly our decisions regarding what services and performance standards are necessary to ensure that TRS is functionally equivalent to voice telephone service. I look forward to a continuing dialogue on these issues.